

## 1 TERM

- 1.1 This Contract shall come into effect on the Commencement Date and shall continue until the end of the Initial Term. Thereafter this Contract shall continue in force unless and until terminated by either party on no less than 90 days' written notice to the other, such notice not to expire before the end of the Initial Term.

## 2 OUR RIGHTS AND OBLIGATIONS

- 2.1 We will use reasonable endeavours to provide the Service in accordance with the Service Standard and will use reasonable skill and care in the provision of the Service. However, You acknowledge that the Service cannot be provided fault free and We do not warrant error free or uninterrupted use of the Service.
- 2.2 We will use reasonable endeavours to provide the Service for use by You from the Proposed Start Date unless otherwise specifically agreed by the parties in writing or unless We are unable to do so as the result of a failure by You to fulfil Your obligations under this Contract or by any delay caused by a nominated third party (including, without limitation, other Network Operators).
- 2.3 If, for any reason and prior to the Service Start Date, You request Us to make any changes to the Services We have agreed to supply to You, You accept that the provision of such requested Services, is subject to Our agreement and such amendment to the Proposed Start Date, the Charges and/or this Contract, as required by Us, in Our sole discretion.
- 2.4 You acknowledge that the provision of the Service is subject to survey and that We shall be entitled to amend the technical aspects of the Service and/or the relevant Charges, as appropriate, following completion of the survey. In the event that the survey reveals that the provision of the Services to You at the Site, will be degraded to such an extent that We would be unable to comply with this Contract, We will be entitled to terminate the Contract (in whole or in part) without any liability to You. In the event of termination of this Contract, for any reason, following completion of the survey but prior to the Proposed Start Date, You will refund to Us (at Our request) any costs incurred, including, without limitation, staff costs, equipment costs and the cost of carrying out the survey.
- 2.5 You accept that there may be some technical limitations within the Network which may not become apparent until after We commence supplying the Service to You, or prior to completion of any tests, as detailed in clause 4.2, it may become apparent to Us that the Services will be degraded to such an extent that We would be unable to comply with this Contract. In such circumstances, We will be entitled to terminate the Contract (in whole or in part) without any liability to You.
- 2.6 We do not guarantee the continuing availability of any particular service and You acknowledge that We may be dependant upon third parties (including, without limitation, other Network Operators) when providing the Service. Notwithstanding any other provisions of this Contract but subject to clause 13.1, We will not be liable to You in contract, tort (including negligence) or otherwise for the actions of any third party (including, without limitation, acts or omissions of the Network Operators) that affect or otherwise impact upon the provision of the Service.

## 3 CUSTOMER'S OBLIGATIONS

- 3.1 In order to enable Us to fulfil Our obligations under this Contract You will, at Your own cost:
- (a) procure all consents, licences and permissions necessary from landlords or other third parties, including (without limitation) consents to building alterations at the Site) any such consents required under the Act or in respect of any other service providers, network operators, maintainers, installers, ISPs or other relevant persons (other than Our duly appointed network sub-contractors) for the carrying out of preparation work installation of Equipment or Service Line(s), the use and operation of the Equipment (including the connection of

Customer Equipment to the Network), the Service Line(s) and the Services at the Site. If You occupy and own the Site(s) in which You are taking Services, by signing this Contract You give Us Your written permission pursuant to the Code to install and keep Our Equipment on the Site(s);

- (b) provide site and building plans (to include full details of all internal cabling runs) of the Site as requested by Us;
- (c) provide Us with full details of all other services in the vicinity of the proposed works;
- (d) ensure that any unique or special conditions applicable to the Site that may affect the survey or the installation and maintenance of any Equipment or the Service Line(s) are made known to Us in writing prior to Us commencing the survey;
- (e) prepare the Site in accordance with any instructions notified in advance by Us and provide Us with such assistance as We may reasonably require for the purposes of carrying out the installation, connection and maintenance of Our Equipment and the Service Line(s);
- (f) ensure that any network testing termination point serving the Site to which the Equipment is to be connected is available for use upon request by Us and is not moved or modified without notification in writing to Us.
- (g) provide Us or Our nominated third party with access to the Site, during normal working hours, and such facilities as they may reasonably require in order to perform the survey, install any Equipment and/or Service Lines(s), provide the Services and otherwise perform Our obligations under the Contract;
- (h) ensure a safe working environment for Our employees and nominated third parties whilst at the Site and procure the same in respect of any Site under the control of any Users; and
- (i) provide Us with information regarding any changes to the Site plans, regulations or any other conditions affecting the Site during the term of the Contract, which may impact the provision of the Services to You or which may be reasonably requested by Us to enable the provision of the Services to You.
- 3.2 In the event that We or You are not able to procure the necessary consent to provide the Services within three months from the Commencement Date We will be able to terminate the Contract without any liability. If You have not managed to procure the necessary consents and We have commenced work You will refund to Us (on Our request) the cost of all such work (including, without limitation, staff costs and equipment costs).
- 3.3 You will advise Us in writing of all health and safety at work rules and regulations, of all dangerous objects and substances, and any other reasonable security requirements applicable at the Site and We will use Our reasonable efforts to observe and ensure that Our employees, network sub-contractors and authorised representatives observe, Your reasonable regulations, as advised to Us pursuant to this clause, whilst at the Site, provided that We shall not be liable to You if, as a result of conforming with such regulations, We are in breach of Our obligations under this Contract.
- 3.4 You shall at Your own expense provide such continuous supply of electrical current and connection sockets as may be required for the installation, operation and maintenance of Our Equipment and Service Line(s).
- 3.5 You shall not move, add to, modify or interfere with or attempt to repair, or cause to be repaired or serviced by any person other than Us or Our network sub-contractor, any of Our Equipment or Service Line(s) (for the avoidance of doubt this includes Our router provided at Your Site).
- 3.6 You shall only attach to Our Equipment or the Service Line(s) such other equipment or apparatus as is approved for connection under the Act, unless with the prior written approval of Us.

- 3.7 You will at all times ensure that the Equipment and the Service Line(s) are kept in a good and proper state of repair, are secure whilst on the Site and maintain the necessary environmental and other conditions for Our Equipment and Service Line(s) as may be specified by Us from time to time.
- 3.8 You will indemnify and keep Us indemnified from and against all costs, (including without limitation, any legal costs or disbursements on an indemnity basis), expenses, damages, liabilities, losses, actions, suffered by Us, directly or indirectly and whether wholly or in part resulting from failure by You to comply with the terms of this Contract. We will not be liable to You if We are unable to carry out Our obligations under this Contract as a result of a breach by You of the provisions of this Contract.
- 3.9 Where You run Your own email server, You will ensure that the server is configured so that it does not allow unsolicited emails to be relayed through it. We will not be liable for any fault or degradation in the Service caused by Your failure to comply with this clause. For the avoidance of doubt, any such fault or degradation will be considered to be a Customer Responsible Fault for the purposes of Part 5.
- 3.10 We will usually carry out the Services during Our normal working hours but may agree, exceptionally, to carry out work outside Our usual working hours subject to Your agreement to pay an Additional Charge.
- 3.11 Further, We may raise an Additional Charge if:
- (a) Our approved engineer is called out because of faults that are found upon examination not to be faults with Our Equipment or the Service Line(s) (including without limitation, power supply fluctuations or faults on another network system or apparatus to which Our Equipment is connected) or the Network; or
- (b) We arrange an appointment for Our approved engineer to attend Your Site but You (i) fail to provide access to the Site, or (ii) cancel the appointment for any reason; or
- (c) if You report the Equipment faulty and We consider (acting reasonably) that it is not, or the fault is not covered by Our warranty with the relevant third party manufacturer.

## 4 PROVISION OF THE SERVICES

- 4.1 As soon as reasonably practicable after the Commencement Date (and in any event prior to the Service Start Date), We will carry out any necessary surveys and install, or procure the installation of Our Equipment and Service Line(s) at the Site and will connect the same to Your network termination apparatus and will carry out other necessary works, including all appropriate software programming.
- 4.2 Following completion of the works described at clause 4.1, We shall carry out Our standard test procedures to ensure that the Services are ready for operation by You. Upon successful completion of such tests We will provide You with a Ready for Use Certificate.
- 4.3 Any duct, underground surface access chambers, cable or other materials developed or provided by Us for the Services shall remain the property of Us or Our network sub-contractor for use exclusively for the Services. You shall not and shall not allow any third party (other than the Our duly authorised network sub-contractor) to interfere with or use the same.
- 4.4 Where Your DNS records are to be transferred We shall not be liable for any loss or damage suffered by You due to Your inability to receive or send an e-mail or for failing to meet the Service Start Date where the same is caused by any act or omission on the part of the ISP from whom Your e-mail or DNS address is to be transferred or of any relevant registration authority or by the failure of You to give consent to the originating ISP to carry out such transfer.
- 4.5 You acknowledge that the Services enable access to the Internet. The use of the Internet is solely at Your risk and expense and shall be in accordance with Our Acceptable Use Policy. We do not accept any liability or responsibility for any information, software, services or other

material obtained or accessed by You through Your use of the Internet.

## 5 OUR EQUIPMENT

5.1 We will supply Our Equipment and the Service Line(s) in accordance with all relevant legislative requirements and will comply at all times with the relevant standard.

5.2 Title to Our Equipment and the Service Line(s) will remain with Us at all times and nothing will operate to transfer ownership of or rights in Our Equipment and the Service Line(s) to You. You shall not remove or obscure any identification mark(s) affixed to the same.

5.3 You agree and undertake and represent to Us to:

(a) take all reasonable and proper care of Our Equipment and the Service Line(s);

(b) comply with all reasonable instructions communicated by Us to You for the safe and proper use of Our Equipment, the Service Line(s) and the Service from time to time;

(c) not operate Our Equipment or the Service Line(s) after it has become defective, damaged or in a dangerous state.

5.4 Risk in Our Equipment and the Service Line(s) will pass to You immediately on delivery.

5.5 You will for the duration of the Contract (without prejudice to Your liability to Us), at Your own expense, effect and maintain insurance in relation to Our Equipment with a reputable insurance company and such insurance will be in an amount equal to the full new replacement value of Our Equipment (including all taxes duties and other payments incidental to any replacements) and on fully comprehensive terms (including third party liability) against loss or damage from any cause, including, but without limitation, all risk of third party liability arising out of the presence or use of Our Equipment.

5.6 You will allow Our employees and nominated third parties access to Our Equipment and the Service Line(s) at all reasonable times upon reasonable notice to inspect, test, adjust, maintain, modify, repair or replace the same. You will be responsible for providing safe, proper and adequate access for such purposes.

5.7 On termination of this Contract if You fail to allow Us to collect Our Equipment You will be liable to Us for:

(a) a sum equivalent to the full retail value of Our Equipment; and

(b) the hire charges, as set by Us from time to time, for the unreturned unit of Our Equipment until the sum specified in 5.7(a) has been received by Us.

5.8 You will be liable for any loss or damage to Our Equipment (reasonable wear and tear excepted), subject to the provisions of clause 13.3, except where such loss or damage is caused by Us or anyone acting on Our behalf.

5.9 We shall not be liable for any failure in the Service, including any obligations to meet any Service Standard, caused by any unauthorised use of the Equipment by You or by a third party on Your behalf.

5.10 We will be entitled to:

(a) modify and/or replace any of Our Equipment or the Service Line(s), or modify the Service from time to time if We consider such modification and/or replacement reasonably necessary for the continued provision of the Service;

(b) suspend the Services for operational reasons and We shall use Our reasonable endeavours to minimise the period of interruption and mitigate the impact of the interruption on the provision of the Services. We shall notify You in advance of any suspension; and

(c) suspend the Services in the case of an emergency and, wherever possible, use Our reasonable endeavours to minimise the period of interruption.

## 6 CUSTOMER EQUIPMENT

6.1 You will make any such modifications to the Customer Equipment as We may determine necessary in order to provide the Service, subject to Your obligations under the Acts.

6.2 You will comply with the Acts and only use Customer Equipment which conforms to the standard in force from time to time as stipulated by the Acts, any law or regulation, or as required by Us for connection of Customer Equipment to the Network. We may disconnect any Customer Equipment which does not conform to such standard or approval or which, in Our reasonable opinion, may cause death, personal injury or damage to property or impair the quality of the Service or any other services provided by Us,

including services to third parties. You will refund to Us any costs We incur as a consequence of such disconnection.

6.3 You will, if requested by Us, provide such information in respect of the Customer Equipment as We may reasonably require including, without limitation, information in respect of signalling equipment..

## 7 DOMAIN NAME REGISTRATION

7.1 If You choose to take a Domain Name from Us, You must tell Us the Domain Name that You would like to use with the Services and We will use Our reasonable endeavours to allocate it to You or, if it is unavailable, such other Domain Name as is reasonably acceptable to You and available for use.

7.2 A Domain Name in the form www.domain.co.uk with an associated email address in the form of user@domain.co.uk will be allocated to You for use with the Services. If You want to use a Domain Name with a different suffix, We will use Our reasonable endeavours to arrange the registration and/or transfer of the relevant Domain Name so that You can use it with the Services. You agree to pay such additional charges, calculated at Our standard rates, as We may impose for the provision of these Services.

7.3 We will automatically renew the registration of any Domain Names You use with the Services, unless You give Us at least one month's written notice that You do not require Us to renew the Domain Name, prior to the renewal date. You agree to pay such additional charges, calculated at Our standard rates, as We may impose for the provision of the Domain Name renewal Services.

7.4 On the termination of the Contract, We will continue to renew the registration of the Domain Names You use with the terminated Services in accordance with clause 7.3 until such time as You tell Us not to by giving Us at least one month's written notice prior to the relevant renewal date. You must continue to pay the Charges calculated at Our standard rates for every renewal that We carry out. For the avoidance of doubt, the provisions of this clause 7.4 shall continue to have effect after the termination of this Contract.

7.5 We will route any IP addresses that were previously assigned to You only if those addresses were assigned to You directly and not through any other ISP. We will not be held responsible if any other ISP refuses to accept these addresses. We shall assign new or additional TCP/IP addresses as requested by You upon being provided with satisfactory documentation justifying the need for those addresses. The documentation must be in accordance with the policies set forth by RIPE. In certain circumstances, it may be necessary for TCP/IP addresses to be approved by RIPE, and in such cases those addresses are only assigned for the duration of the Services and become invalid at such time as We no longer provide the Services to You. We shall not be responsible for any decision made by RIPE. When We assign addresses to You, a temporary extension (usually thirty (30) days after the end of the Services) may be granted at Our sole discretion. Following termination or any further period (if any), those TCP/IP addresses may be reassigned by Us to other customers. If You wish to apply for addresses that will subsist beyond the duration of the Services, You must do so directly to RIPE. Any decision by RIPE or by another ISP relating to TCP/IP addresses is the responsibility of RIPE or of that other ISP and We accept no responsibility for such decision.

7.6 We will not accept responsibility for any loss of ownership of any Domain Name where You have instructed Us not to renew the registration and We will not be liable for any losses You incur as a result of this.

7.7 On Your request, We will arrange for the transfer of any Domain Names You use with the Services to an alternative ISP. You agree to pay such additional charges, calculated at Our standard rates, as We may impose for every such transfer that We carry out. We will not accept responsibility for any failure to re-register or renew the registration of any Domain Names that occur after they have been transferred from Us.

## 8 USE OF THE SERVICE

8.1 You will and You will ensure that any Users:

(a) use the Services only in accordance with Our instructions as may be notified in writing from time to time, and in accordance with the relevant provisions of the Act, Our Acceptable Use Policy, and any other relevant Legislation; and

(b) not use the Service to commit an offence under the Acts or any other relevant Legislation.

8.2 You will not use or permit any User or third party to use the Service:

(a) in an illegal manner or for an illegal purpose;

(b) in connection with any criminal or public nuisance offence;

(c) to knowingly or recklessly transmit any material which contains software viruses or any computer codes, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software or hardware; or

(d) for the purpose of sending, posting, publishing, distributing, disseminating or transmitting, or in any way in connection with, any message communication or material which is offensive, abusive, indecent, obscene, harassing or menacing or which is fraudulent or defamatory or contains another's proprietary information (including trademarks or other copyright material) without such party's authorisation, or is otherwise unlawful or which (in Our reasonable opinion) brings Our name into disrepute or in any way which intentionally causes damage or disruption to the Services or the Network or a third party network, or use the Service in a manner which constitutes a violation or infringement of the rights of any other person.

8.3 You must not use or request a Domain Name such as would be likely to lead to a breach of clause 8.2(d) or such as to infringe the rights of any other person, whether in statute or common law, in a corresponding trademark or name.

8.4 Both parties agree to co-operate with the Police and any other relevant authorities (including but not limited to Customs and Excise, the Inland Revenue, the Office of Fair Trading, Trading Standards Departments and/or OFCOM and any successors from time to time) in connection with any misuse or suspected misuse of the Services and You consent to Us co-operating with any other telecommunications operators in connection with any suspected fraudulent activity related to or connected with the Services and agrees that, subject to compliance with UK data protection laws, We shall be entitled to divulge the name and address of and account information relating to You to such third parties. We will, to the extent that We can, notify You of any such disclosure.

8.5 You shall only use the Services for the carriage of traffic up to the Agreed Bandwidth. We shall be entitled to make random inspections of Your use of the Services from time to time, in order to audit the bandwidth being utilised by You, and in particular to ensure that the Agreed Bandwidth has not been, and is not being, exceeded.

8.6 For the avoidance of doubt, We shall not be liable for any costs incurred by You as a direct or indirect result of Your network set-up including, without limitation, any increased ISDN call charges.

8.7 You acknowledge that We may carry out regular checks to detect the presence of email servers which are relaying unsolicited emails and, where such a server is detected, that We may suspend the Service until You have reconfigured the server to prevent the relaying of unsolicited emails. We shall not be liable for any losses suffered by You caused by such suspension of the Service.

## 9 CHANGES TO THE SERVICES

9.1 We may from time to time make changes to the Service Standard. Such changes will be notified to You not less than 28 days prior to their taking effect.

9.2 You may at any time request a change in the Agreed Bandwidth. We will respond within 14 days with details of when such change to the Service could be provided and of the resultant change in the Rental Charges. On receipt of written request from You that You wish to proceed with the increased Rental Charge, We will (in Our absolute discretion) implement the increased Agreed Bandwidth.

9.3 Our standard Rental Charges shall apply to any increase in the Agreed Bandwidth provided in accordance with clause 9.2, such increased Rental Charges to apply from the date of implementation of the increased Agreed Bandwidth and shall apply for a minimum of five Working Days.

9.4 You may at any time request an increase to the circuit speed of the Services (a "Bearer Upgrade"), subject to the Bearer Upgrade being equivalent to or higher in value than the current Service and You paying to Us:

(a) any outstanding Connection Charges;

(b) the Rental Charges for the first six (6) months of the Initial Term; and

- (c) any other Charges payable by You at the date of the Bearer Upgrade.
- 9.5 No order for additional services will be effective until it has been confirmed by Us in writing, countersigned by such of Your personnel as You have previously informed Us, in writing, are authorised to place an order and returned to Us. We are not obliged to process or accept any order submitted by You.
- 9.6 Any orders for additional services will be governed by the terms of this Contract only. If You submit any orders or requests for additional services it will always be on the basis that these terms of this Contract apply.
- 9.7 If We or Our network sub-contractor, at Your request, change the location of any of Our Equipment or Service Line(s), You shall pay to Us all applicable charges for any re-connections and associated work.
- 10 CHARGES**
- 10.1 You will pay Us all appropriate Charges from the Service Start Date at the rates set out in Part 1, as the same may be varied in accordance with clauses 9.2 and 10.3. All invoices shall be sent to the address specified in Part 1.
- 10.2 The Rental Charges shall be payable in advance at the frequency detailed in Part 1 and shall be due from the Service Start Date. The Connection Charge shall be payable upon the Service Start Date. Any other Charges shall be payable on demand.
- 10.3 Following the expiry of the Initial Term, We may at any time vary the Charges on no less than 30 days' prior written notice to You. If You do not accept the changes in the Charges You may terminate this Contract on 14 days' written notice to Us.
- 10.4 All payments due hereunder are payable within 30 days of the date of the relevant invoice and shall be paid in full without set-off, deduction or withholding of any kind. We reserve the right to charge daily interest on any outstanding amounts until payment is received in full at a rate equal to 4% per annum above the lending rate of National Westminster Bank plc as current from time to time, whether before or after judgment until the date actual payment is received.
- 10.5 All amounts payable hereunder are exclusive of value added tax or any other applicable taxes which may from time to time be levied and such value added tax or other applicable taxes shall be itemised separately on all invoices and bills and shall be payable by You in addition to, and at the same time as, any Charges.
- 10.6 Where in order to provide You with the Service it is necessary in Our reasonable opinion to (whether in whole or in part) use non-standard or exceptionally expensive methods or where a substantially greater cost than usual is incurred by Us so as to render Our standard tariff inappropriate We may charge an additional charge. If We decide to do so, We will inform You and if You do not wish to pay such additional charges You may terminate this Contract by giving Us 30 days' written notice. For the avoidance of doubt, if You choose to terminate this Contract under this clause 10.6, We shall not be entitled to charge an early termination payment in accordance with sub-clause 12.6.
- 10.7 Where any Charges or other monies properly due to Us or any member of Our Group from You under this Contract or any other contracts are outstanding We will be entitled to offset such payments against any payments due from Us or any member of Our Group to You under any other Agreements between Us or any member of Our Group and which relate to telecommunications services.
- 11 SOFTWARE LICENCES**
- 11.1 Any software contained in Our Equipment, provided by Us or Our network sub-contractors in connection with the Service Line(s) or any software or documentation provided by Us in connection with the provision of the Service is and will remain Our property or the property of Our licensors. We hereby grant You a non-exclusive, non-transferrable right to use such software and documentation for the purpose of accessing the Service only. You will not make any modifications to such software and documentation. If You modify the software in any way We will be entitled to terminate the Contract with immediate effect. You will indemnify and keep Us indemnified against any costs (including, without limitation, any legal costs or disbursements on an indemnity basis), losses, damages or liabilities We may incur due to You amending or in any way altering the software.
- 11.2 If You become aware of any breach of third party rights, pursuant to the supply of the Services, the possession or use of any equipment or products provided to You (including, without limitation, the Equipment) as part of the Services or in any way connected to this Contract, You agree that You shall:
- give Us notice of any such claim within 14 days of the date on which You are first given notice that the claim has been made;
  - Allow Us or Our licensors to have sole conduct of the defence or settlement of any such claim; and
  - You agree that You will provide Us with all reasonable assistance in conducting the defence or settlement of any such claim and shall make no prejudicial statement or admission of liability.
- 11.3 For the avoidance of doubt, We shall have the right, at Our sole option and expense, to:
- procure the right for You to continue using the items so that such use is no longer infringing;
  - modify the Services and/or infringing items so that they become non-infringing without a material diminution in their performance or specification so that the provision of the Services is not materially adversely affected and extend the provisions of this clause thereto; or
  - replace the infringing items with any reasonable equivalent non-infringing substitute, provided there is no material diminution in their performance or specification and the provision of the Services is not materially affected.
- 11.4 Upon termination of this Contract You shall promptly return or, if requested, destroy all copies of the software and documentation held by You that is in a tangible form, including software or documentation stored on electronic or optical storage devices, whether in digital form or otherwise.
- 12 TERMINATION**
- 12.1 If either party is:
- in breach of any provision of this Contract (other than clause 6.1 or 6.2) and fails to remedy such breach within 30 days of written notice to do so;
  - unable to pay its debts as they fall due or threaten to suffer any resolution to wind up its business or enter into involuntary or compulsory liquidation or have an administrator, administrative receiver, receiver or any analogous officer appointed over all or part of its assets;
- then the other party may immediately upon notice in writing (without prejudice to any other rights and remedies it may have) terminate (either in whole or in part) this Contract.
- 12.2 We may terminate this Contract (either in whole or in part) with immediate effect if:
- You are in breach (or We reasonably believe You are in breach) of clauses 6.1 or 6.2 as breach may be a criminal offence and/or cause serious harm to Our reputation;
  - Our authorisations to provide the Services are altered in a way that is material to the Service.
- 12.3 We will continue to provide the Services in accordance with Clause 2 until termination of this Contract but if:
- You are late in making any due payment, or
  - We become entitled to terminate this Contract early for any reason, or
  - You break any material term of another contract with Us or another company in Our Group
- then We may partially or completely suspend the Services without limiting Our ability to enforce other remedies that may be available. While the Services are suspended You must continue to pay the Charges.
- 12.4 We will continue to provide the Services in accordance with clause 1 until termination of this Contract but if:
- You are late in making any due payment, or
  - We become entitled to terminate this Contract early for any reason, or
  - You break any material term of another contract with Us or another company in Our Group
- then We may partially or completely suspend the Services without limiting Our ability to enforce other remedies that may be available. While the Services are suspended You must continue to pay the Charges.
- 12.5 Upon termination of this Contract You shall cease to use the Services and shall pay to Us any outstanding amounts due in connection with this Contract, together with any applicable disconnection charges.
- 12.6 In the event that this Contract is terminated by Us pursuant to clauses 12.1 or 12.2, or by You, (other than where such termination by You is due to the default of Us), You agree to pay a Termination Fee, calculated as follows:
- prior to the Service Start Date, then You will pay to Us a proportion of the Connection Charge, calculated by reference to the number of Working Days between the date of notice of termination and the intended Service Start Date; or
  - after the Service Start Date but prior to the end of the Initial Term, then You will also pay Us any Rental Charges which would have been payable had this Contract continued to the end of the Initial Term minus a 10% deduction for costs not incurred by Us and a 10% deduction for early payment of the monies.
- 12.7 You acknowledge that Our prices have been calculated on the basis that the Contract will continue until the end of the Initial Term and accordingly agrees that it is reasonable for Us to recover such costs, together with the Rental Charges.
- 12.8 The expiry or termination of this Contract will be without prejudice to any other rights either party may be entitled to and will not affect any accrued rights or liabilities of either party.
- 13 LIMITATION OF LIABILITY**
- 13.1 Nothing in this Contract shall limit either party's liability for fraud, or for death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents.
- 13.2 Except as expressly provided in this Contract all conditions, warranties, terms, undertakings and obligations express or implied by statute (including, without limitation, those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to Us)), common law, custom, trade usage or otherwise and all Our liabilities in respect of the same (if any) are excluded to the maximum extent permitted by English Law.
- 13.3 We will in no circumstances be liable to You in contract, tort (including negligence) or otherwise for any loss of business; loss of data; loss of profits; loss of goodwill; loss of anticipated savings even when advised of the possibility; loss of revenue or; any indirect or consequential losses, liabilities or costs nor for any loss or damage whatsoever suffered by You due to viruses, hacking or distributed attacks.
- 13.4 In respect of any failure of the Services to comply with the specifications or standards applicable pursuant to this Contract, Your sole and exclusive remedy shall be to claim a Service Credit in accordance with the Service Standard.
- 13.5 Both parties accept liability in respect of damage to the others tangible property resulting from its or its employees' negligence up to an aggregate of £2,000,000 (two million pounds).
- 13.6 Other than in respect of clauses 13.1 and 13.5 and subject to clause 13.3, Our maximum aggregate liability in contract, tort, negligence or otherwise arising out of, or in connection with, this Contract will in respect of any and all acts, omissions, defaults or events occurring in a Contract Year be limited in aggregate to the greater of:
- £500,000; or
  - the value of the Charges paid by You in the preceding Contract Year ("Liability Sum").
- In the event that 12 months has not accrued from the Service Start Date to the date of the relevant default, the Liability Sum will be calculated by calculating the monthly average Charges incurred over the relevant period and multiplying it by 12.
- 13.7 We will in no circumstances be liable to You in contract or tort (including negligence) or otherwise if We fail to renew Your domain name.
- 14 FORCE MAJEURE**
- Neither party to this Contract shall be deemed in default or liable to the other party for any manner whatsoever for any delays in performance or from failure to perform or comply with the terms or any provision of this Contract due to acts of God, acts of Government and of OFCOM or other competent regulatory authority, and acts or omissions of telecommunications network operators with whom We do not have a direct business relationship, war or national emergency, riots, civil commotion, fire, 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), or any cause beyond that party's reasonable control ("Force Majeure Event").

14.1 If either party is prevented from performance of its obligations for a continuous period of 3 months either party may terminate this Contract by giving written notice.

## 15 EXPORT CONTROL

15.1 You acknowledge that the Services (including, but not limited to, Software, technical assistance and training) provided under this Contract may be subject to export laws and regulations of the USA and other countries, and any use or transfer of the Services must be in compliance with all applicable regulations. You will not use, distribute, transfer, or transmit any part of the Services (even if incorporated into other services) except with Our, or Our licensor's, express written approval and in compliance with all applicable export regulations.

## 16 RECORDS/INFORMATION

16.1 You agree that We may, use credit reference agencies to help Us decide whether We can provide (or continue to provide) the Services. We can pass information about You and Your payment record to credit security and debt collection agencies and to other companies in Our Group to help recovery and credit control.

16.2 We or Our agents may sometimes monitor or record calls made to Our Customer Network Operations Centre for training and quality control purposes.

16.3 We use Your information (which may include individuals within Your organisation's personal data) ("**Customer Information**") for the purpose of supplying the Services to You, administering this Contract including handling orders, billing, processing payments, payment collection and communicating with You regarding the Services. We may pass this Customer Information on to third parties or other members of Our Group: (a) to undertake these functions on our behalf; or (b) if required by law. We may also contact Your organisation (including individuals within Your organisation) by letter, telephone or e-mail with details of Our services that may be of interest. If an individual does not wish to receive marketing material from Us then please notify us by calling 01392 333309.

16.4 As We continue to develop our business, members of Our Group may be sold and any relevant Customer Information may be transferred as part of the sale, subject to the terms of this clause.

## 17 DATA PROTECTION

17.1 Each party shall ensure that in the performance of its obligations under this Contract and You will ensure that its use of the Services will at all times comply with the Data Protection Act 1998.

17.2 You shall indemnify and hold harmless Us against any liability whatsoever arising from a breach by You of the provisions of clause 17.1.

## 18 GENERAL

18.1 This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Contract.

18.2 Each of the parties acknowledges and agrees that in entering into this Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as set out in this Contract. Nothing will operate to limit or exclude any liability for fraud.

18.3 Should any provision of this Contract be held to be void or voidable the remaining provisions of this Contract will continue in full force and effect.

18.4 No forbearance, delay or indulgence by either party in enforcing the provision of this Contract will prejudice or restrict the rights of that party nor will any waiver of its rights operate as a waiver of any past or subsequent breach.

18.5 We will use Our reasonable endeavours to meet any delivery time, date or period. However, such dates shall be regarded as estimates and We shall have no liability to achieve any such time, dates or periods other than the payment of Service credits as detailed in the Service Standard.

18.6 Any notice under or in connection with this Contract shall, unless otherwise agreed, be in writing and may be delivered by hand or sent by certified first class post return receipt requested, or by an internationally recognised overnight courier, to the address of the party concerned set out in this Contract or any other address notified from time to time.

18.7 Any notice addressed as provided in clause 18.6 shall be deemed to have been given or made on

the second Working Day after posting if sent by first class post, or the next Working Day if sent by overnight courier, and upon delivery if delivered by hand (unless such delivery occurs on a day which is not a Working Day or after 4.00pm on a Working Day, in which case it will be deemed to have been given or made at 9.00am on the next Working Day).

18.8 Members of Our Group may enforce their rights under clause 10.7 but no other person or body who is not a party to this Contract has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Contract (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).

18.9 Save as permitted by clause 18.10, neither party may assign this Agreement without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

18.10 We may assign this Contract to any company within Our Group.

18.11 We reserve the right to vary these terms and conditions to the extent necessary to take into account any changes to Industry Agreements and any relevant Legislation. Any other variations must be in writing and agreed between the parties.

18.12 This Contract shall be governed by English law and the parties shall submit to the exclusive jurisdiction of the English courts.

## 19 DEFINITIONS

19.1 In this Contract the following terms shall have the following meanings:

"Acceptable Use Policy" Our policy on the acceptable use of the Service as amended from time to time which is published on Our website;

"Acts" the Communications Act 2003, the Telecommunications Act 1984 and the Electronic Communications Act 2000 (each as amended from time to time);

"Additional Charges" the additional fees which may be charged at Our standard rates, in force from time to time, as detailed in this Contract;

"Agreed Bandwidth" the bandwidth specified in Part 1, as the same may be varied in accordance with clause 10.1;

"Charges" any Connection Charge, Rental Charges, Additional Charges, Domain Name renewal charges (if any) or other charges payable by You in connection with this Contract as detailed in Part 1;

"the Code" Schedule 2 of the Telecommunications Act 1984 as amended by Schedule 3 of the Communications Act 2003.

"Commencement Date" the date of signature of this Contract;

"Connection Charge" a one-off charge payable to Us for the connection of the Services, as specified in Part 1;

"Contract" these terms and conditions together with Parts 1 to 5;

"Customer Equipment" any equipment at the Site owned by You or a third party which when operated in conjunction with Our Equipment and the Service Line(s), allows You to obtain and/or receive the Service

"Customer Network Operations Centre" the centre, details of which will be supplied to You, to which all fault reports and help queries should be addressed;

"DNS" (Domain Name System) the mechanism used to resolve IP addresses against domain names;

"Domain Name" a node name and associated email address allocated to You for use with the Services;

"Equipment" Our Equipment and Customer Equipment;

"Force Majeure Event" an event of force majeure as that term is described in clause 14. For the avoidance of doubt, a Force Majeure Event includes denial of service attacks, mail bombing and other flooding techniques;

"Industry Agreements" any standard industry agreements or third party agreements which impact on Our ability to provide the Services;

"Initial Term" a period of 12 months (unless otherwise stated in Part 1), commencing on the Service Start Date;

"ISP" internet service provider, other than Us;

"Legislation" all acts of Parliament and statutory regulations, instruments or orders and codes of practice and all applicable European Union laws,

treaties, directives and other legislation as any of the same may be amended or replaced from time to time;

"Network" the telecommunications infrastructure and system operated by Us and/or the network of any Network Operator, as applicable;

"Network Operator(s)" any licensed public telecommunications operator whose network is used by Us to deliver the Service;

"OFCOM" the Office of Communications or successors from time to time;

"Our Equipment" any equipment located at the Site which is supplied by Us or a third party as part of the Service;

"Our Group" means Us, Our holding company, Our subsidiaries, and any subsidiary of Our holding company. The terms "subsidiary" and "holding company" have the meanings given to them by section 1159 and Schedule 6 of the Companies Act 2006 (as amended); and

"Proposed Start Date" the date specified in Part 1 or as amended on which the Service is due to be made available to You;

"Ready for Use Certificate" the certificate to be supplied to You when the Service is ready for use;

"Rental Charges" the charges payable to Us for the on-going provision of the Services, as specified in Part 1 or as varied in accordance with clauses 9.2 or 10.3;

"Service Line(s)" any communication line(s) forming part of the Network and used by Us in the provision of the Services;

"Services" a service consisting of a broadband link to an Internet portal operated by Us;

"Service Standard" the standards to which various elements of the Services will be provided as set out in Part 5;

"Service Start Date" the Proposed Start Date or if different the earlier of the date upon which You are notified the Service is available for use or the date You begin using the Services;

"Site" the Site where the Services are to be provided, as more fully described in Part 1;

"Users" any individual authorised by You to use the Service;

"We/Us"[ClubWizard LTd] (registered number [04431215]) whose registered office is at [675 Kenton Lane, Middlesex, HA3 6AS];

"Working Day" Monday to Friday 9.00am to 5.00pm except for UK bank and public holidays.

"You/Your" the person or Company to whom We provide the Services as detailed in Part 1.