



Introduction: Use of Terms and Conditions

Section 1: Hosting Systems Standard Terms and Conditions

- Clause 1.1 Definition of Terms
- Clause 1.2 Provision of Service
- Clause 1.3 Payment and Terms
- Clause 1.4 Client's Obligations
- Clause 1.5 Warranties
- Clause 1.6 Term and Termination
- Clause 1.7 Consequences of Termination
- Clause 1.8 Renewal
- Clause 1.9 Confidentiality
- Clause 1.10 Cancellations
- Clause 1.11 Force Majeure
- Clause 1.12 Data Protection
- Clause 1.13 Liability
- Clause 1.14 Data Backup
- Clause 1.15 General Usage Policy
- Clause 1.16 Suspension of Services
- Clause 1.17 Variation
- Clause 1.18 Indemnity
- Clause 1.19 Waiver
- Clause 1.20 Assignment

Introduction: Use of Terms and Conditions

The following are the legal terms and conditions of an agreement between you and Hosting Systems Ltd. The Service Contract (defined below), these Terms and Conditions and the Acceptable Use Policies (defined below) constitute and set out the entire agreement ("the Contract") between the Client (defined below) and Hosting Systems Ltd. (defined below) relating to the subject matter in the Contract. If there is any inconsistency between these documents they shall take precedence in that priority order. The Contract supersedes and replaces all prior communications, drafts, contracts, representations, warranties, undertakings and agreements of whatever nature whether oral or written, between the parties to the Contract. Use of Hosting Systems services by the Client implies agreement with these Terms and Conditions and therefore these Terms and Conditions apply even in the absence of a signed Service Order or Service Contract.

Section 1: Hosting Systems Standard Terms and Conditions

Clause 1.1 Definition of Terms

1.1.1 In this Agreement the following terms shall have the following meanings:

"Act" means the Telecommunications Act 1984

"Acceptable Use Policy" means an acceptable use policy posted on Hosting Systems' website found at <http://www.hostingsystems.co.uk> from time to time applicable to all aspects of services provided by Hosting Systems

"Agreement" means this document, and, where the context so requires, any Service Order, Application Form, Acceptable Use Policy, Hosting Systems' Price List and / or the Service Description

"Apparatus" means any telecommunications apparatus required for the provision of the Service and installed by or on behalf of Hosting Systems (including by a sub-contractor) at the Client's Premises

"Business Day" means any day (other than Saturday, Sunday or English public holiday) on which the banks in England are open for a full range of banking transactions

"Hosting Systems" means Hosting Systems Ltd. of 69 James Street, Penkhull, Stoke-on-Trent, ST4 5HR

"Hosting Systems' System" means the telecommunication and / or Internet system run by Hosting Systems and / or

its service providers

"Hosting Systems Website" means the website at <http://www.hostingsystems.co.uk> or at such other URL as Hosting Systems may determine from time to time

"Charges" means without limitation the Set-up Charge and the Service Charge and any other applicable Charges as outlined in the Hosting Systems Price List

"Client" means the person, firm, or company whose Application / Service Order is accepted by Hosting Systems

"Commencement" means that point in time when the Client's account is set-up on Hosting Systems' internal provisioning system and hosting equipment configured to provide a Service to the Client

"Components" means all components of the system within Hosting Systems' and / or any third party's premises that provide dedicated Internet access to the Customer and which are necessary for the supply of the Service, but excludes the Customer's Equipment

"Confirmation Letter" means a letter or any other form of document issued by Hosting Systems confirming and accepting the Customer's order for the Service.

"Conditions" means the standard Terms and Conditions for the supply of Services set out or referred to on the Application / Service Order

"Confidential Information" means all information which relates to the business affairs, products, developments, trade secrets, know-how, personnel, clients and suppliers of either party or information which may reasonably be regarded as the confidential information of the disclosing party

"Connectivity" means the connection to the Internet using the dial-up telephone number, ADSL connection, or other connection to the Internet as specified by Hosting Systems and informed to the Client by Hosting Systems from time to time; and

"Contract" or "Service Contract" means the related Co-Located Server Contract, Bandwidth Contract, ADSL Contract, or any other provision of Service as stated on the Application Form / Service Order relating to the particular Services requested and Contracts shall be construed accordingly

"Dial-Up Platform" means the access number to be used by the Client to connect to the Internet or to the Hosting Systems account as specified by Hosting Systems

"Domain Name" means the domain name requested by the Client to be registered on the Client's behalf as outlined on the Application or any alternative domain name offered by Hosting Systems

"Client's Equipment" means the telecommunications leased line and all equipment and facilities located at the Customer's premises including but not limited to Customer-owned routers (unless the Client orders a managed router service as part of the Service).

"Client's Website" means the website belonging to the Client which is hosted

"Force Majeure" means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, or happenings beyond its reasonable control. Including (but not limited to) wars, riots, embargoes, strikes, lockouts, acts of god, insurrection, or civil commotion

"Input Material" means all materials, data, images, and information necessary for the Client's use of the Service

"Installation Date" means the proposed installation date for the Service as defined in the relevant Service Order / Application Form

"Internet" means the worldwide TCP / IP (Transmission Control Protocol / Internet Protocol) network formed of an interconnection of companies, organisations and institutions, private and public networks

"Keyword Selection Policy" means the guidelines for the selection of Internet Keywords ("Keywords") as dictated to Hosting Systems by the Registrar or the body responsible for the granting of the Keywords

"Licence" means any licence required for Hosting Systems to provide the Service or to run Hosting Systems' System

"Name" shall mean the name assigned to the Client in relation to the provision of the Service including but not limited to any mailbox and domain names

"Ofcom" means Office of Telecommunications or the Director General of Telecommunications

"Offending Material" means any material, data, images or information (including without limitation, the Input Material) which is (1) in breach of any law, regulation, code of practice or acceptable use policy; or (2) abusive, indecent, defamatory, obscene or menacing or otherwise offensive; or (3) in breach of confidence, copyright or other intellectual property rights, privacy or any other right of any third party

"Order Form" means the agreement or relevant order form or such other appropriate form for the Service issued by Hosting Systems that the Client completes and sends to Hosting Systems

"Package" means any Hosting Systems products bundled together as required by the Client as defined on the Service Order

"Party" means a party to the Contract and "Parties" shall be construed accordingly

"Personnel" means the employees, agents or sub- contractors of the respective Party

"Premises" means any sites owned or occupied by the Client at which the Service is, or will be, provided, as specified in a Service Order

"Processing" means any use of messages or calls or data including sending, receiving, uploading, downloading and posting on web-sites or elsewhere

"Registry" means the relevant registry or naming authority responsible for the registration of domain names that includes (without limitation) Nominet UK and Network Solutions Inc.

"Server" means the server of certain specifications selected by the Customer in the Order Form and confirmed by Hosting Systems Ltd. in the Confirmation Letter.

"Services" means the Hosting Systems service selected by the Client in the Service Order

"Service Charge" means the Charges for the Service set out in the applicable Service Order, Service Description and / or in any Hosting Systems price list as in force from time to time

"Service Order" means a Hosting Systems Service Order / Application Form

"Set-up Charge" means Hosting Systems' charge for setting-up the Service (including any installation charge) set out in the Service Order, Service Description and / or Hosting Systems Price List as in force from time to time

"Software" means any device supplied by Hosting Systems to support the usability of its services as used by the Client

"Standard Charges" means the standard charges for the Service as set out in the Order Form or otherwise as set out on Hosting Systems' Website

"Terms and Conditions" means these Terms and Conditions including any Schedules hereto

"Work" means any work carried out by Hosting Systems (or its sub-contractor) at the Premises for the purpose of installing, maintaining, repairing, moving, replacing or removing any Apparatus in order to comply with any of its obligations under this Agreement.

Clause 1.2 Provision of Service

1.2.1 Hosting Systems will provide the Service to the Client in accordance with the provisions of this Agreement upon a Service Order or Application having been duly signed by the Client and returned to Hosting Systems and subject to the further provisions of this Agreement.

1.2.2 The Client may request Hosting Systems to supply Service to the Client. Hosting Systems, in its absolute discretion, may accept the Client request by processing the request including the raising of an invoice (pro-forma or otherwise) for services.

1.2.3 Hosting Systems will endeavour to provide the Service in a timely manner but (in particular where Hosting Systems are dependent on another operator to provide the Service and / or due to technical reasons) cannot guarantee to do so, and Hosting Systems will have no liability for any failure to meet such date.

1.2.4 Hosting Systems possesses the right to change service providers at any time without consulting the Client and the Client empowers Hosting Systems to act as its agent and have full authority to select, change or remove sub agents when deemed necessary.

1.2.5 Hosting Systems shall provide the Services using all reasonable care and skill subject to payment by the Client of all amounts payable hereunder on the dates specified herein or on the Application.

1.2.6 The Client accepts that Hosting Systems reserves the right to subject the Client to a credit check and has sole discretion over whether or not the Client may utilise Hosting Systems' services based on the results of that check. The Client also accepts that if the credit check does not meet Hosting Systems' requirements, whatsoever they may be at the time, that Hosting Systems may request the Client to pay annual in advance or a deposit in line with the estimated annual charges that the Client may incur by using the service. The Client accepts that this credit check may impact their credit rating and that this information may be shared with other related companies or subcontractors from time to time.

1.2.7 The Client acknowledges that Hosting Systems cannot provide advice or technical support for any aspect of the Client's own network and therefore the Client acknowledges that costs may be incurred by the Client for any technical consultation provided by a third party enabling the compatibility of the Client's own network to work to specification with the services as provided by Hosting Systems as outlined on the Service Order.

1.2.8 The Client shall do all things and provide all such information as is reasonably required by Hosting Systems to provide the Services in accordance with these Terms and Conditions.

Clause 1.3 Payment and Terms

1.3.1 Any agreement shall commence on the date of acceptance by Hosting Systems of the Application submitted by the Client.

1.3.2 The fees payable to Hosting Systems in respect of the Services are specified in the Hosting Systems Price List.

1.3.3 All Charges are due in advance (whether disputed or not) unless special payment terms have been agreed. The Client acknowledges that Hosting Systems reserves the right to suspend the customer's entire account in the event of non-payment for any overdue invoice (pro-forma or otherwise.)

1.3.4 All Charges are exclusive of VAT and any other applicable purchase tax, import, and all other duties. Any failure by the Client to pay any fees due under these Terms and Conditions on the date specified shall be deemed to be a "material breach" of these Terms and Conditions.

1.3.5 The Client acknowledges that he shall provide Hosting Systems with such amount in cash or by way of guarantee as Hosting Systems may specify from time to time as a non-refundable payment of Charges for the remaining balance on the Contract. If the deposit is not provided within seven days of request, Hosting Systems will have the right to disconnect the Service. Interest is not payable on deposits.

1.3.6 If the Client is overdue with any payments hereunder, then without prejudice to Hosting Systems' other rights and remedies, the Client shall be liable to pay to Hosting Systems a flat fee of £15 for each correspondence, Hosting Systems' solicitors and court fees, as well as interest on the amount payable at an annual rate of 5% above the prevailing base rate of The Bank of England, which interest shall accrue on a daily basis from the date payment becomes overdue until Hosting Systems has received payment of the overdue amount together with all interest.

1.3.7 The Client accepts that if any services provided by Hosting Systems are disconnected because of non-payment or because of any breach of contract or Acceptance of Use Policies, Hosting Systems has the right to charge the Client a reconnection fee of £35 plus VAT for each reconnection unless specifically stated otherwise in these Terms and Conditions.

1.3.8 The Client acknowledges responsibility for informing Hosting Systems of all billing address changes and any changes relating to the Client's ability to be contacted and further confirms that Hosting Systems must be informed of any changes on the account including but not limited to address changes or contact person changes and that Hosting Systems will not be held responsible for any disruption or lack of service which result from a lack of notification by Client to Hosting Systems regarding such changes

Clause 1.4 Client's Obligations

1.4.1 The Client shall:

- 1.4.1.1 Supply Hosting Systems with such information as Hosting Systems or its sub-contractor may reasonably request in order to carry out any work
- 1.4.1.2 Grant or procure so that Hosting Systems or its sub-contractor are granted all necessary authority at all reasonable times and on reasonable notice (except in the case of an emergency) to carry out the work and install any Apparatus at the Premises
- 1.4.1.3 In the case of an emergency grant or procure that Hosting Systems or its sub-contractor is granted all necessary authority to enter the Premises immediately and without notice
- 1.4.1.4 Provide appropriate space, ducting, suitable and safe working environment and electrical power for Hosting Systems or its subcontractor to install the Apparatus at the Premises at no cost
- 1.4.1.5 Not alter, adjust, or interfere with the Apparatus or allow any of Client employees or agents to do so
- 1.4.1.6 Ensure that the Apparatus is kept safe and not interfered with by any third party.

Clause 1.5 Warranties

- 1.5.1 In performing Hosting Systems' duties under this Agreement, Hosting Systems shall, at all times use its reasonable endeavours to exercise reasonable care of a competent ISP (Internet Service Provider) or, as applicable, telecommunications operator. The Client acknowledges that neither Hosting Systems, nor any other party, has control over the Internet and service interruptions may occur due to circumstances beyond or at times within Hosting Systems' reasonable control such as internal and / or external system malfunctions or failures of third parties. The Client therefore acknowledges that Hosting Systems shall not be held liable in any way for losses as a result of such service interruptions regardless of their nature.
- 1.5.2 The Client further acknowledges that Hosting Systems shall in no way be held liable for any service outage or disruption that occurs as a result of any of Hosting Systems' suppliers' failure to provide a service. For clarification, if any of Hosting Systems' suppliers enters administration, liquidation, is wound up or for any reason fails to provide a service to Hosting Systems that impacts the Client, Hosting Systems shall not be held liable. In the event that Hosting Systems selects an alternative supplier in order to restore the service to the Client, the Client acknowledges that any increase in the costs to Hosting Systems as a result of the supplier change will be passed on to the Client.
- 1.5.3 The Client acknowledges that it is not possible for Hosting Systems to provide a 100% fault-free Service. Hosting Systems expressly reserves the right to disconnect availability of Internet access for the purpose of necessary or scheduled maintenance. Access to e-mail may also be adversely affected by conditions and performances outside Hosting Systems' control including without limitation the breakdown of transmission and telecommunication links or provisions of services by Hosting Systems' selected service providers. Sometimes Hosting Systems will need to suspend the Service for maintenance, scheduled or unscheduled. While Hosting Systems will try to maintain the Service 24 hours a day, seven days a week, Hosting Systems cannot guarantee to do so. Hosting Systems will always try to repair reported faults and / or restore the Service as soon as reasonably practical.
- 1.5.4 The Client warrants to Hosting Systems that the Client has obtained and will maintain all such approvals, way leaves, and licences as may be necessary to perform Hosting Systems' obligations under this Agreement or to allow Hosting Systems to do so and that the Client will comply generally with all applicable laws and regulations.
- 1.5.5 No other warranties or representations, expressed or implied, are given by either party under this Agreement and any implied warranties are expressly excluded.
- 1.5.6 The Client warrants that it will comply with the provisions of the end-user licence relating to all aspects of Services in which an Application has been provisioned.
- 1.5.7 The Client warrants that it will comply in every respect with the provisions of Hosting Systems' General Usage Policy.

Clause 1.6 Term and Termination

- 1.6.1 Either party may terminate this agreement by providing 60 days written notice with no termination earlier than the initial contract period.
- 1.6.2 If the Client terminates this Agreement during the initial period, other than because Hosting Systems has increased its Charges or materially changed the terms of this Agreement to the Client's detriment, or if the Agreement is terminated by Hosting Systems under 1.6.3 below, the Client must pay Hosting Systems the applicable Charges for the remainder of the initial contract period.
- 1.6.3 Either party may terminate this Agreement or the Service provided under it forthwith by notice to the other if:
 - 1.6.3.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
 - 1.6.3.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances; or
 - 1.6.3.3 the other fails to pay any Charges when due; or
 - 1.6.3.4 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court makes an order to that effect; or
 - 1.6.3.5 the other party ceases to carry on its business or substantially the whole of its business; or
 - 1.6.3.6 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer is appointed over any of its assets; or
 - 1.6.3.7 the bandwidth used for traffic to and from the web site is exceeded beyond Hosting Systems' considered acceptable use and is deemed by Hosting Systems to affect the performance of other Clients' Business Websites. Notwithstanding any other remedies it may have under these Terms and Conditions or in law, Hosting Systems, in the event that the acceptable bandwidth is exceeded, may elect to charge the Client an additional monthly fee as set out in the Hosting Systems Price List or Service Order.
- 1.6.4 If any of the events detailed above occur as a result of Hosting Systems' default, Hosting Systems may by

giving notice to the Client to disconnect the Service or any part of it without prejudice to Hosting Systems' right to terminate this Agreement. Where the Service or any part of it is disconnected under this paragraph, the Client must pay the Charges for the Service until this Agreement is terminated.

1.6.5 Any rights to terminate this Agreement shall be without prejudice to any other accrued rights.

1.6.6 On termination of this Agreement for any reason:

1.6.6.1 Hosting Systems shall have the right immediately to remove any Apparatus from the Premises; and

1.6.6.2 all amounts owing for the Service shall be due and payable in full on demand whether or not then due and Client shall have no right to withhold or set off such amounts; and

1.6.6.3 Hosting Systems reserves the right to cease and / or delete all services with immediate effect or at the end of the agreed notice period.

Clause 1.7 Consequences of Termination

1.7.1 Upon the termination of any Agreement for any reason whatsoever:

1.7.1.1 the client shall promptly return to Hosting Systems all copies of the Software in his possession; and

1.7.1.2 Hosting Systems may cease to host the Business Web Site with immediate effect; and

1.7.1.3 each party shall on request promptly return any documents or papers relating to the business of the other party (including any of the other party's Confidential Information) which it then has in its possession or control.

Clause 1.8 Renewal

1.8.1 Hosting Systems will automatically renew the Client's contract each year after the initial one-year contract period unless the Client notifies Hosting Systems in writing at least 60 days prior to the end of the contract period instructing Hosting Systems to do otherwise.

1.8.2 Whilst Hosting Systems will use all reasonable endeavours to ensure that the Domain Name, Existing Domain Name, Internet Keyword or any other Hosting Systems product is renewed at the relevant renewal date, the Client acknowledges that it is not possible for Hosting Systems to guarantee such renewal and that Hosting Systems shall not be liable for any failure to renew the Domain Name or the Existing Domain Name.

1.8.3 The Client acknowledges that in the event the Client fails to remit payment or fails to instruct Hosting Systems not to renew the Hosting Systems package, Hosting Systems reserves the right to renew the Domain Name or any associated Domain Names under its own IPS tag and reserves the right to change the Admin, Technical and Billing contacts to a Hosting Systems representative and that Hosting Systems will, at that point, become the rightful owner of the Domain Name.

1.8.4 The Client also acknowledges that in the event the Client fails to remit payment or fails to instruct Hosting Systems not to renew the Hosting Systems package, Hosting Systems reserves the right to offer an alternative domain name to the Client if payment is received during Hosting Systems' debt recovery process.

Clause 1.9 Confidentiality

1.9.1 The Client shall ensure that its employees, agents, and sub-contractors shall, keep confidential and not, without Hosting Systems' prior written consent, use or disclose to any third party any material or information relating to the Agreement and/or Hosting Systems' business which the Client may acquire in the course of or in accordance with the Agreement.

1.9.2 Nothing in Clause 1.9.1 will be taken to prevent the Client from disclosing any information:

1.9.2.1 in Client's possession (with full right to disclose) before disclosed by Hosting Systems'; or

1.9.2.2 which is or becomes public knowledge other than by breach of this clause; or

1.9.2.3 which the Client may independently develop or receive from a third party (with full right to disclose)

1.9.3 Hosting Systems reserves the right (but does not assume the obligation) to inspect any material which the Client processes using the Service to ensure Hosting Systems' compliance with the Agreement and any legal requirements.

1.9.4 The Client and Hosting Systems may disclose such material if requested or required to do so by the police or any other competent authority.

1.9.5 If requested to do so by a third party Hosting Systems may disclose such material during the course of an action for the infringement of their rights which Hosting Systems reasonably believes to arise from the Client's use of the Service. Hosting Systems may modify or remove any material that infringes this Agreement.

1.9.6 The Client hereby agrees that Hosting Systems may record or monitor the Client's calls to Hosting Systems for quality and contractual purposes.

1.9.7 Where the Client uses the Service to post material on a Web Site (including chat-rooms and other facilities), the Client grants to Hosting Systems and its licensors and assigns a royalty-free, irrevocable licence to use, edit, copy, republish and distribute such material through the Service (for any purpose.) Hosting Systems may remove any material that appears on any page of Hosting Systems' own Web Site.

1.9.8 All information, drawings, specification, documents, contracts, design material and all other data, which either party may have disclosed and may from time to time disclose to the other party relating to its business, Clients, prices, services, requirements, the Software, the Web Site, the Services and these Terms and Conditions, including any technical specifications (the "Confidential Information"), are proprietary and confidential to the disclosing party.

Clause 1.10 Cancellations

1.10.1 Hosting Systems reserves the right to cancel the service at any time. In this event customers will be entitled to a pro-rata refund based on the remaining period of membership. If a customer contravenes Hosting Systems'

terms of service a refund will not be issued in the event of a cancellation. Customers may cancel their account at any time. Fees charged on a prepay basis are non-refundable.

Clause 1.11 Force Majeure

1.11.1 Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control (an "event of force majeure"), provided the same arises without the fault or negligence of such party and the affected party notifies the other party within two (2) working days of becoming aware of the same of such event of force majeure and the manner and extent to which its obligations are likely to be prevented or delayed, and provided also that the occurrence of any such event of force majeure shall not have the effect of discharging or postponing the affected party's payment obligations hereunder.

1.11.2 If any event of force majeure occurs, the date(s) for performance of the obligation(s) affected shall be postponed for so long as is made necessary by the event of force majeure provided that if any event of force majeure continues for a period of or exceeding 60 days, the non-affected party shall have the right to terminate any agreement governed by these Terms and Conditions forthwith on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any event of force majeure.

Clause 1.12 Data Protection

1.12.1 Unless indicated otherwise on the relevant Application/ Service Order form, the Client hereby agrees to allow Hosting Systems to collect and process data and information regarding the Client's use of the Service and to provide this to sub-contractors and/or companies affiliated with Hosting Systems for the purposes of marketing Hosting Systems' (or Hosting Systems' affiliated companies') services, or other related services, or for any other purpose connected with the Agreement. In particular, but without limitation, if the Service is provided to the Client following a third party referral, the Client agrees that Hosting Systems may provide them with such reasonable information as they request regarding the installation of the Service and Hosting Systems' provision of the same to the Client. Hosting Systems will provide the Client on request with details of all such information held by Hosting Systems, and will modify any information that the Client advises is incorrect.

1.12.2 Subject to and in accordance with relevant data protection legislation, the Client hereby consents to allow Hosting Systems to collect data regarding Hosting Systems' use of the Services and to provide such data to any governmental or regulatory body for the purpose of Hosting Systems' compliance with any applicable laws and regulations.

1.12.3 Each party shall for the duration of any Agreement governed by these Terms and Conditions comply with the provisions of the Data Protection Act 1998, (including the data protection principles set out in that Act) and any similar or analogous laws, regulatory requirements or codes of practice governing the use, storage or transmission of personal data and shall not permit anything to be done which might cause or otherwise result in a breach by either party of the same.

1.12.4 Hosting Systems possesses the right to communicate with the Client regularly via, but not limited to, electronic means.

1.12.5 Hosting Systems may, from time to time, send Client information relating to the services of other companies that Hosting Systems feels may be of interest to the Client. If the Client does not want to receive such information, it is to inform Hosting Systems in writing.

1.12.6 Hosting Systems has the right to deny Customer Support to the Client if the Client fails to demonstrate to the Hosting Systems representative upon receipt of a phone call or e-mail by Hosting Systems that they are indeed the Client and therefore authorised to request that changes be made on the account. The Client acknowledges that it may not always be possible for Hosting Systems to guarantee that breaches will not occur and therefore agrees to cooperate with Hosting Systems staff in its requests for Client authentication.

Clause 1.13 Liability

1.13.1 Nothing in this Agreement shall restrict or exclude either party's liability for fraud, death or personal injury.

1.13.2 The Client shall not be entitled to any liquidated compensation or refund payments for unavailability of or interruptions to the Service.

1.13.3 Hosting Systems shall not be liable to the Client nor to any third party under this Agreement in contract, tort or otherwise for any direct or indirect loss of profit, anticipated savings, business, contracts, revenue, time, goodwill or loss of or harm to data or other content or for any other indirect or consequential loss.

1.13.4 Hosting Systems shall not be liable in respect of any goods or services purchased or obtained or any transactions entered into by the Client through the Service with third parties. Further Hosting Systems shall have no liability to the Client in respect of any third party Internet criminal activity (including without limitation as a result of computer 'hackers') or in respect of billing, payment, or other information that passes between Hosting Systems over the Internet (including by e-mail) in relation to the provision of the Service.

Clause 1.14 Data Backup

1.14.1 Whilst Hosting Systems shall use its reasonable endeavours to ensure that backup copies of the Client's Web Site and all Client data contained in the Web Site are made at reasonable intervals, the Client shall be solely responsible for the backup of such data and Hosting Systems shall not be liable for any damages, loss, costs or other expenses arising out of or in connection with any loss of data by the Client which are due to the failure of the Client or Hosting Systems to back up such data. If the Client requests a restore for reasons other than an error by Hosting

Systems, then Hosting Systems reserves the right to charge for this service.

1.14.2 Where Hosting Systems had been requested to perform additional backup services, Hosting Systems will only backup whatever is specified in writing. Hosting Systems cannot be held responsible for extra items not included in backup routines if not requested to do so in writing.

Clause 1.15 General Usage Policy

1.15.1 The Client agrees to adhere to Hosting Systems' General Use Policy so as to ensure a safe, functional, and trusted environment for Hosting Systems Clients to publish their information on the Web and will comply with all parts of this clause as well as with the Acceptable Use Policy as found at <http://www.hostingsystems.co.uk>

1.15.2 The parties acknowledge and agree that the Client shall have full editorial control over the contents of the Web Site and the Client warrants that the Web Site (including where the Client engages in any form of electronic communication through a discussion forum, via the Web Site or otherwise with any end-user) shall not:

1.15.2.1 be in breach of the laws of England and Wales or the country of establishment of the Client or any end-user of the Web Site, or any international conventions, codes or regulations applicable to the Internet including but not limited to infringement of copyright and other Intellectual Property Rights, defamation, theft, fraud, drug-trafficking, money laundering and terrorism; or

1.15.2.2 include any obscene or inflammatory language; or

1.15.2.3 include any defamatory material; or

1.15.2.4 promote sexually explicit materials; or

1.15.2.5 promote violence, sadism, cruelty or incite racial hatred; or

1.15.2.6 promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; or

1.15.2.7 promote illegal activity.

1.15.3 The Client shall cover and keep Hosting Systems covered against all proceedings, losses, liabilities, damages (including legal costs), Charges and expenses of whatsoever nature arising out of or in connection with any action or claim that the content of the Web Site violates the provisions noted above.

1.15.4 Clients in breach of this policy will be contacted by Hosting Systems and given the opportunity to remove the content in question before having services suspended. The Client accepts that repeated infractions may cause the cancellation of service without refund of any fees.

1.15.5 The Client agrees to comply with all applicable legal and regulatory requirements and any applicable licence; and

1.15.5.1 not use the Service in a way which could cause it to be interrupted, damaged or otherwise impaired or which violates Hosting Systems' rights (including intellectual property rights) or those of any third party (including copyright, confidence, privacy or other rights); and

1.15.5.2 not knowingly intercept or attempt to intercept any message that passes over Hosting Systems' System or attempt to access any unauthorised component of the Service; and

1.15.5.3 only connect to Hosting Systems' System or the Apparatus, telecommunications equipment that is approved for use by Hosting Systems and complies with all relevant legislation, standards, and licence requirements; and

1.15.5.4 comply with all reasonable instructions Hosting Systems gives the Client relating to the use of Hosting Systems' System or Apparatus; and

1.15.5.5 pay the applicable Charges as set out in the Service Order or Applications and comply with any additional obligations specified in the Service Description, Service Order or any applicable Acceptable Use Policy.

1.15.6 Hosting Systems does not support unsolicited e-mail messages sent by users of Hosting Systems' system (also known as junk e-mail or SPAM) other than to the Client's own Clients. Users sending unsolicited e-mail messages from Hosting Systems' system or posting SPAM in Usenet Newsgroups will have all services temporarily suspended. The Client will then be contacted by Hosting Systems and informed of the suspension before having services reinstated. The Client accepts that repeated infractions may cause the cancellation of service without refund of any fees.

1.15.7 The Client agrees to access Hosting Systems' services using its published fully qualified domain name (FQDN - e.g. smtp.hostingsystems.co.uk) and not the underlying IP address and acknowledges that Hosting Systems reserves the right to change the underlying IP address of any of its services without prior notice.

1.15.8 Hosting Systems may, at its sole discretion, run manual or automatic systems to check compliance with these Terms and Conditions. The Client acknowledges that these checks may include, but are not limited to, scanning for open mail relays, smurf amplifiers and insecure formmail scripts. By accessing the Internet via Hosting Systems' services, the Client is deemed to have granted permission for these checks.

Clause 1.16 Suspension of Services

1.16.1 Hosting Systems may disconnect the provision of Service without liability on its part, and with as much prior notice as reasonably possible (except in the case of paragraph (a) below in which case Hosting Systems may do so without prior notice:)

(a) if necessary for operational reasons or for the purposes of carrying out Work at the Premises or maintaining or upgrading the Service or Hosting Systems' System; or

(b) if obliged to comply with an order, instruction, or request of an emergency service organisation or a governmental or other competent authority.

Clause 1.17 Variation

1.17.1 Except as explicitly stated in this Agreement, the terms of the Agreement may only be changed or modified by Hosting Systems on behalf of both parties. Hosting Systems may change the technical specification of the Service at

any time, provided this does not detrimentally affect its performance.

1.17.2 Hosting Systems may amend this Agreement at any time, with immediate effect, in order to comply with any law, regulation or ruling of Ofcom or any other Governmental or regulatory body.

Clause 1.18 Indemnity

1.18.1 The Client shall indemnify Hosting Systems against all third party claims and losses, liabilities, costs and expenses (including without limitation reasonable legal expenses) that Hosting Systems may incur as a result of any breach of the Client's obligations under this Agreement or misuse of the Services (whether by Client or not) provided that this indemnity shall not apply to the extent that any claim or part of a Claim directly results from any wrongful or negligent acts or omissions by Hosting Systems.

Clause 1.19 Waiver

1.19.1 Failure or delay by either party to enforce any of its rights under this Agreement shall not be deemed to be a waiver of any such right nor prevent that party from exercising or enforcing that same right or any other right on a later occasion.

Clause 1.20 Assignment

1.20.1 Hosting Systems may assign or otherwise transfer this Agreement at any time. The Client may not assign or otherwise transfer this Agreement or any part of it without Hosting Systems' written consent.

Last updated: 30/03/2010