

TERMS AND CONDITIONS

General Terms and Conditions of Business

1. Definitions

In these Conditions the following words shall have the following meanings: -

- “Charges” means all charges from time to time payable by the Customer being such of the Domain Name Registration Charge, Internet Services Charge, Hire Charge Set Up Charge, Purchased Equipment and Consultancy Charge as are referred to in the Schedule;
- “Co-Customers” means any party who may access the Services via the Customer’s identifiers with or without the Customer’s consent;
- “Consequential Loss” means any consequential loss which includes without limitation any economic loss or other loss of production, product, use, turnover, business, savings, anticipated savings, contract, use, corruption of data or information, profits, anticipated profits, business opportunity or goodwill, any special, indirect, consequential or pure economic loss, costs damages or expenses, and all loss or damage to property or equipment of the Customer, or any of its sub-purchasers, or any other third party;
- “Company” , “TSS” means T & S Solutions (West Midlands) Limited (whose registered office is situated at 13 Paget Road, Wolverhampton. West Midlands. UK.
- “Consultancy Charge” means the charge for the provision of the Consultancy Services set out in the Schedule;
- “Consultancy Services” means the consultancy services to be provided by the Company to the Customer pursuant to the Contract, if any, and described more particularly, where applicable, in the Schedule;
- “Contract” means the contract made under these Conditions for such of the purchase by the Customer from TSS of the Services and/or the Internet Services and/or the sale of the Hardware and/or the licensing of the Software and/or hire by the Customer from TSS of the Hire Equipment, as is set out in the Schedule,;
- “Customer” means the Customer, details of whom are set out in the Schedule;
- “Customer’s Equipment” means the Customers computer system being all such equipment, software and communications lines, including any public lines required to properly access the Internet and includes any Customer Server;
- “Customer Obligations” means the obligations of the Customer under the Contract, as set out in these Conditions, the Schedule and the SLA, where relevant;
- “Customer Server” means any server of the Customer which the Company has, as set out in the Schedule and as part of the Internet Services, agreed to house at the Company’s premises;
- “Contract” means the contract made under these Conditions for such of the purchase by the Customer from the Company of the Services and/or the Internet Services and/or the sale of the Hardware and/or the licensing of the Software and/or hire by the Customer from the Company of the Hire Equipment, as is set out in the Schedule;
- “Delivery Date” means the delivery date (if any) set out in the Schedule;
- “Domain Names” means the domain name(s) (if any) set out in the Schedule;
- “Domain Name Registration Charge” means the charge for the registration of the Domain Name(s) set out in the Schedule;
- “Domain Name Registration Service” means the domain name registration service (if any) as set out in Condition 3 in respect of the registration of the Domain Name(s).
- “Goods” means the Hardware and the Software;
- “Hardware” means the hardware (if any) to be sold to the Customer as set out in the Schedule;
- “Hire Equipment” means the hardware and software (if any) to be supplied to the Customer on a hire basis as set out (subject to Condition 6.3) in the Schedule;
- “Hire Term” means, where the Schedule provides for the hire by the Customer of the Hire Equipment, the Initial Period continuing thereafter for each Renewal Period unless and until the Contract is terminated in accordance with Condition 19;

- “Hosting Services” means the hosting services provided the Company at its premises including the provision of power, air conditioning, security, communications facilities, cabling technical support and such other services as are set out in the Schedule and described in the SLA;
- “Independent Expert” means an independent computer systems analyst to be agreed upon between the parties or, in default of agreement within seven days, to be nominated by or on behalf of the President for the time being of the British Computer Society;
- “Initial Period” means the initial period set out in the Schedule commencing on the Live Date;
- “Insolvency Event” means if a party becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for amalgamation or reconstruction) or an event analogous to the above occurs in respect of a party in any jurisdiction to which that party is subject;
- “Internet Services” means the services (if any) to be provided by the Company to the Customer set out in the Schedule (where applicable);
- “Internet Services Charge” means the periodic charge (if any) set out in the Schedule, as may be varied from time to time in accordance with Condition 4.13;
- “Internet Services Term” means the Initial Period continuing thereafter for each Renewal Period unless and until the Contract is terminated in accordance with Condition 19;
- “Job Acceptance Form” means the Company’s standard job acceptance form indicating its acceptance of an order;
- “Live Date” means the date on which the Internet Services are first made available to the Customer;
- “Managed Services” means the business continuity services for use by the Customer in the event of a disaster as set out in the Schedule;
- “Renewal Period” means the renewal period referred to in the Schedule commencing on expiration of the Initial Period and each consecutive period of the same length of time thereafter during the period of the Contract;
- “Server” means any server or equipment of the Company from time to time through which the Company provides the Internet Services;
- “Services” means the Services to be provided by the Company to the Customer under the Contract and more particularly described in the Schedule, being any or all of the Internet Services, the Consultancy Services, the Hosting Services, the Managed Services and/or the Domain Name Registration Service;
- “Set Up Charge” means the set up charge (if any) set out in the Schedule in respect of the provision of and installation of the Hardware and the Software (if any), the Hire Equipment (if any), the provision of the Hosting Services (if any), Managed Services (if any) and the Internet Services Charge (if any) and Hire Charge (if any) due in respect of the Initial Period;
- “Site” means the Customer’s business premises or any other agreed installation location specified in the Schedule;
- “SLA” means the Company’s standard form of service level agreement for the Services as attached to the Contract;
- “Software” means all software to be licenced by the Company to the Customer as set out in the Schedule;
- “Software Licences” means the third party licence terms in respect of the Software;
- “Warranty Period” means the warranty period set out in the Schedule.

2. Basis of Agreement

- 2.1 the Company shall, to the extent set out in the Schedule, sell to the Customer the Services, Hardware and Software and / or supply to the Customer the Hire Equipment subject to these Conditions and the SLA, which shall govern the Contract to the exclusion of any other terms and conditions. Subject to Condition 23, no variation to the terms of the Contract shall be binding unless agreed in writing between authorised representatives of the Customer and the Company. The Customer’s order constitutes acceptance of these Conditions.
- 2.2 the Company shall not be bound to provide to the Customer any of the Services, Hardware, Software and Hire Equipment until the Company acknowledge the Customer’s order by sending the Customer its Job Acceptance Form.

- 2.3 the Company's employees or agents are not authorised to make any representation concerning the Goods, the Hire Equipment and / or the Services unless confirmed in writing by the Company.
- 2.4 No order which has been accepted by the Company pursuant to Condition 2.2 may be cancelled by the Customer in the event that the Customer cancels an order during the Initial Period or any Renewal Period, no refund of the charges paid by the Customer in advance in respect of the Initial Period or any Renewal Period shall be payable to the Customer.
- 2.5 The quantity and description of the Goods, Hire Equipment and Services shall be as set out in the Schedule.
- 2.6 Quotations provided by the Company are only valid in writing and during the period stated in the quotation and if no such period is stated, a period of 7 days.
- 2.7 All samples, drawings, descriptive matter, specifications and advertising issued by the Company, and any descriptions or illustrations contained in The Company's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.
- 2.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.9 The Company reserves the right (but does not assume the obligation) to make any changes in the specification of the Services, Hire Equipment or the Goods which are required to conform with any applicable legislation or, where the Goods, Hire Equipment or Services are to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where The Company is not the manufacturer of any Hardware or the owner of any Software or Hire Equipment, the Company shall use reasonable endeavors to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer or owner (as applicable) to the Company.
- 2.10 In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of the Company. However, nothing in these Conditions limits the Company's liability for fraudulent misrepresentation.
- 2.11 Any advice or recommendation given by the Company or its employees, contractors or agents to the Customer or its employees, contractors or agents about the Services or the storage, application or use of the Goods or Hire Equipment which is not confirmed in writing by an authorized officer of the Company is followed or acted on entirely at the Customer's own risk.

3. Domain Name Registration Service

- 3.1 The provisions of this Condition 3 shall apply to the extent that the Customer has agreed to buy, and the Company has agreed to provide the Domain Name Registration Service.
- 3.2 the Company has a search facility to identify whether domain names are available to register. This service shall be available to the Customer free of charge, however, the Company can offer no guarantees in respect of the accuracy of this service and the provisions of Condition 3.7 below shall apply in respect of any searches conducted using such service.
- 3.3 In consideration of the Customer agreeing to pay to the Company the appropriate Domain Name Registration Charge within 30 days from the date of the Company's invoice or in advance, where required by the Company, the Company shall provide the Domain Name Registration Service, subject to the acknowledgements of the Customer set out in Condition 3.8 below.
- 3.4 The Customer acknowledges that:
 - 3.4.1 the availability of a Domain Name, whether or not the Company has indicated to the Customer that the name is according to its records available, is dependent upon factors outside of the control of the Company, including but not limited to registration of the Domain Name by a third party in the period between an availability check by the Company and registration with the relevant naming authority and the refusal by the naming authority to register the Domain Name for any reason;
 - 3.4.2 The Company cannot provide any guarantee that a Domain Name requested will be accepted by the relevant naming authority and registered;

- 3.4.3 it shall be responsible for the compliance of any terms and conditions imposed by the relevant naming authority in respect of the Domain Name. Copies of the relevant terms and conditions can be obtained from the appropriate naming authority;
- 3.4.4 the registration of a Domain Name does not give any guarantee that the Customer shall be free to use the Domain Name and that the Domain Name will not infringe the rights of any third party.
- 3.5 All requests placed by the Customer for registration of Domain Names will be automatically processed by the Company through the relevant naming authority, provided that the Domain Name remains available. It is therefore not possible to cancel registrations and the Domain Name Registration Charge is only refundable in the event that the Domain Name becomes unavailable prior to acceptance by the naming authority.
- 3.6 The Company reserves the right, but not the obligation, to refuse to process any application to register a Domain Name, if it believes that the Domain Name may infringe the Intellectual Property Rights of any third party or is offensive, contrary to the public interest or otherwise unacceptable to the Company in its absolute discretion.
- 3.7 Whilst the Company shall co-operate in respect of any request by the Customer to transfer control of the Domain Name to a third party, the Company reserves the right to retain control of the Domain Name and prevent such transfer in the event that any payment in respect of the Charges (including but not limited to the Domain Name Registration Charge) are outstanding.
- 3.8 In the event that the Domain Name is not registered as a result of the circumstances set out in Condition 3.4 the Company's entire liability in respect of any failure to register a Domain Name shall be limited to a refund of any Domain Name Registration Charge actually paid by the Customer to the Company.
- 3.9 In the event that The Company incurs any other liability to the Customer such liability will be limited in accordance with Condition 17.

4. Internet Services

- 4.1 The provisions of this Condition 4 shall apply where the Customer agrees to purchase and the Company agrees to provide, the Internet Services.
- 4.2 In consideration of the Customer paying to the Company the Internet Services Charge the Company shall provide to the Customer the Internet Services for the period of the Internet Services Term.
- 4.3. the Company reserves the right (but not the obligation):
 - 4.3.1 to control, direct and establish technical procedures for the use of the Server, any Customer Server housed by the Company and the Internet Services and the Customer agrees to follow the Company's reasonable instructions and procedures with respect to the use of the same;
 - 4.3.2 to make operational changes to the Internet Services, including the Customer's identifiers, IP addresses allocated, or other technical characteristics of the Internet Services;
 - 4.3.3 to inspect or permit the police or other relevant authority to inspect the content and material in the Customer's files, e-mails, newsgroup postings, website, etc;
 - 4.3.4 to refuse to post any material or information or remove any content which is, in its absolute discretion, unacceptable or undesirable;
 - 4.3.5 to change the software, hardware or any other technology used in the performance of its obligations under this Contract.
- 4.4 The Customer will be responsible for obtaining and maintaining the Customer's Equipment. Save where the Company specifically agrees in writing to provide any part of the Customer's Equipment, the Company has no responsibility for or liability with respect to the use, operation or compatibility of the Customer's Equipment.
- 4.5 The Customer will ensure at all times that the Customer's use of any software and the Internet Services, including connection of the Customer's Equipment (but not the Customer Server) to the Server, is in accordance with all applicable data protection and other laws, licences, codes of practice and regulations.

- 4.6 The Customer undertakes for itself and for any other party using the Customer's access to the Internet Services:
 - 4.6.1 To use all reasonable endeavors to ensure that no message, e-mail or other communication is sent which, under the law of the United Kingdom or country where the Services are provided, or under international conventions, codes or regulations applicable to the Internet or in the reasonable opinion of the Company:
 - 4.6.1.1 is in breach of those laws, codes or regulations including but not limited to infringement of intellectual property rights, defamation, theft, fraud, harassment, drug trafficking, money-laundering and terrorism;
 - 4.6.1.2 may incite violence, sadism, cruelty or racial hatred;
 - 4.6.1.3 may facilitate prostitution or paedophilia;
 - 4.6.1.4 is pornographic, obscene, indecent, abusive, offensive or menacing;
 - 4.6.1.5 which gives the impression that the message or posting originated from someone other than the original sender (including without limitation the Company);
 - 4.6.2 to use all reasonable endeavors not to create and/or introduce into the Server and /or connected systems any virus or other destructive or contaminating program or advise any other party how to do so;
 - 4.6.3 not to invade the privacy of users of the Internet in general, including sending unsolicited e-mails, newsgroups or message board postings, ("spamming") nor to collect or transfer personal data in breach of applicable data protection laws;
 - 4.6.4 to maintain confidentiality of the Customer's login names, passwords and other confidential information relating to the Customer's access to the Internet Services;
 - 4.6.5 not to tamper with routing and domain name services in order to "spoof" other computer networks;
 - 4.6.6 not to do or permit anything else which would damage the name and reputation of the Company or would otherwise be detrimental to the Company, its equipment or networks, or which would degrade or deny service for customers of the Company or any third parties.
- 4.7 The Customer acknowledges that:
 - 4.7.1 The Company does not warrant or represent that it can provide continuous access to its Servers or to the Internet, although the Company will use all reasonable endeavors to avoid interruptions this may not be possible due to reliance on third parties, routine maintenance, repairs, reconfigurations or upgrades or circumstances beyond its control;
 - 4.7.2 the Internet is neither controlled or owned by any one entity therefore the Company cannot make any guarantee that any user shall be able to access the Internet Services at any given time;
 - 4.7.3 the information, software or other material accessible over the Internet via the Internet Services may contain viruses, or other harmful and destructive components;
 - 4.7.4 the Internet contains material which the Customer may find offensive and, if the Customer views or posts, publishes, transmits or downloads such material, the Customer does so at the Customer's own risk of prosecution;
 - 4.7.5 neither the Internet nor the Internet Services are absolutely secure and accordingly the Company cannot guarantee the privacy of any of the Customer's information;
 - 4.7.6 the Customer is solely responsible for all use of the Internet Services accessed through the Customer's password and/or other electronic identifiers with or without its consent.

- 4.8 The Customer's sole remedy under the Contract for breach by the Company in respect of the Internet Services is termination of the Internet Services by immediately discontinuing use of the Internet Services.
- 4.9 In the event that the Company incurs any liability to the Customer such liability will be limited in accordance with Condition 17.
- 4.10 The Company is not liable to the Customer or any Co-Customer for any act or omission of any other entity furnishing products or services which are required by the Customer to use Internet Services. Nor will the Company be liable for any damage or loss due to the fault or negligence of the Customer, or for the failure of any products or services provided by the Customer via the Internet Services.
- 4.11 The Company is not responsible in contract or in tort for the unauthorised access to, or alteration, theft or destruction of e-mails, files, programs, or information of the Customer by any person other than the Company through accident or by fraudulent means or devices or by any law enforcement agency.
- 4.12 The Customer shall pay to the Company the Internet Services Charge for the Initial Period and each Renewal Period (or part thereof) during which the Customer receives the Internet Services.
- 4.13 The Internet Services Charge shall be payable annually in advance, unless specified otherwise in the Schedule and the Company shall be entitled to vary the Internet Service Charge at any time on Written Notice to the Customer.
- 4.14 In the event of late or default payment the provisions of Condition 12.7 shall apply.

5. Supply of Goods

- 5.1 The provisions of this Condition 5 shall apply to the extent that the Customer agrees to purchase and the Company agrees to provide the Goods as part of the Services.
- 5.2 In consideration of the Customer paying to the Company the Set Up Charge, the Company agrees to:
 - 5.2.1 sell to the Customer the Hardware;
 - 5.2.2 supply to the Customer the Software, subject to the Customer accepting the terms of the Software Licence(s) in accordance with Condition 5.17;
 - 5.2.3 install the Hardware and the Software at the Site, if the Company has agreed to provide an installation service as set out in the Schedule.
- 5.3 The Company shall use all reasonable endeavors to deliver the Goods to the Site on the Delivery Date or as soon thereafter as is possible. Time of delivery shall not be of the essence of the Contract and the Company shall not be liable for any loss suffered by the Customer resulting from late delivery.
- 5.4 At delivery the Customer shall prepare the Site as the Company shall have previously specified in writing (including by email or facsimile transmission).
- 5.5 The Company shall have no liability to the Customer in respect of late or partial delivery where the same results from the Customer's failure to prepare the Site in accordance with Condition 5.4 above in a timely manner.
- 5.6 The Set Up Charge shall unless otherwise specified in the Schedule include the cost of delivery of the Goods to the Site and installation but shall be exclusive of any value added tax which shall be payable by the Customer in the manner and at the rate from time to time prescribed by law.
- 5.7 Payment of the Set Up Charge shall be made in accordance with Condition 12.1.
- 5.8 The Company reserves the right, by giving notice to the Customer at any time prior to delivery, to increase the Set Up Charge to reflect any increase in costs to the Company. However, in this event, the Customer shall have the right, prior to delivery, to cancel the Contract and receive a refund of any Charges paid in respect of Goods or Services not provided at the date of cancellation.
- 5.9 The Customer acknowledges that the Goods are supplied to the Company by a third party, accordingly the Company can give no warranty in respect of such Goods (other than as set out in Condition 16) but will to the extent possible pass on to the Customer the benefit of any warranties or guarantees given by such third party in respect of such Goods.

- 5.10 On delivery of the Goods, all risk shall pass to the Customer who shall until such time as ownership in the Goods passes to the Customer be responsible for insuring the Goods to their full replacement value.
- 5.11 Ownership of the Goods shall pass to the Customer on the later of completion of delivery (including off-loading), or when the Company has received in full in cleared funds all sums due to it in respect of:
 - 5.11.1 the Set-Up Charge; and
 - 5.11.2 all other sums which are or which become due to the Company from the Customer on any account.
- 5.12 Until ownership of the Goods has passed to the Customer under Condition 5.11, the Customer shall:
 - 5.12.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 5.12.2 store the Goods (at no cost to the Company) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as the Company's property;
 - 5.12.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 5.12.4 keep the Goods insured on the Company's behalf for its full price against all risks to the reasonable satisfaction of the Company, and hold the proceeds of such insurance on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 5.13 The Customer's right to possession of the Goods before ownership has passed to it shall terminate immediately if the Customer suffers an Insolvency Event or if the Customer encumbers or in any way charges the Goods, or if the Customer fails to make any payment to the Company on the due date.
- 5.14 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to remove them. All costs incurred by the Company in repossessing the Goods shall be borne by the Customer.
- 5.15 On termination of the Contract for any reason, the Company's (but not the Customer's) rights in this Condition 5 shall remain in effect.
- 5.16 The Company may appropriate payments by the Customer to such Goods, Hire Equipment or Services as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.
- 5.17 The Customer shall be bound by and shall at all times comply with the Software Licence(s).

6 Supply of the Hire Equipment

- 6.1 The provisions of this Condition 6 shall apply to the extent that the Company is providing Hire Equipment to the Customer as part of the Services.
- 6.2 In consideration of the Customer paying to the Company the Hire Charge in accordance with these Conditions, the Company agrees to:
 - 6.2.1 supply to the Customer the Hire Equipment, which to the extent that it includes any Software shall be subject to the Customer accepting the terms of the Software Licence(s) ;
 - 6.2.2 install the Hire Equipment at the Site, if the Company has agreed to provide an installation service as set out in the Schedule.
- 6.3 The Hire Equipment shall be of an equivalent or better standard (in the Company's reasonable opinion) to that specified in the Schedule and where changes are necessary the Customer shall be consulted.
- 6.4 The Company shall use all reasonable endeavors to deliver the Hire Equipment to the Site on the Delivery Date or as soon thereafter as is possible. Time of delivery shall not be of the essence of the Contract.

- 6.5 At delivery the Customer shall prepare the Site as the Company shall have previously specified in writing (including by email or facsimile transmission).
- 6.6 The Company shall have no liability to the Customer in respect of late or partial delivery where the same results from the Customer's failure to prepare the Site in accordance with Condition 6.5 in a timely manner.
- 6.7 The Set Up Charge shall unless otherwise specified in the Schedule include the cost of delivery of the Hire Equipment to the Site and installation (where specified in the Schedule) but shall be exclusive of any value added tax which shall be payable by the Customer in the manner and at the rate from time to time prescribed by law.
- 6.8 Payment of the Set Up Charge shall be made in accordance with Condition 12.1.
- 6.9 The Company reserves the right, by giving notice to the Customer at any time prior to delivery, to increase the Set Up Charge to reflect any increase in costs to the Company. However, in this event, the Customer shall have the right, prior to delivery, to cancel the Contract and receive a refund of any Charges paid in respect of Hire Equipment or Services not provided at the date of cancellation.
- 6.10 The Customer may use the Hire Equipment for the purposes of its business by its employees only. The Hire Equipment is not to be used, and the Customer will not permit them to be used, for any purposes for which it is not expressly designed.
- 6.11 The Customer agrees that it will not:
 - 6.11.1 without the prior consent of the Company effect any technical, mechanical or other modification to the Hire Equipment, make any alterations or additions, and any such additions alterations or modified parts which may be made (whether with or without consent) shall become part of the Hire Equipment and shall belong to the Company;
 - 6.11.2 remove or interfere with any identification marks or plates affixed to the Hire Equipment nor attempt or purport to do so nor permit the same.
- 6.12 The Customer shall during the continuance of the Hire Term:
 - 6.12.1 ensure that the Hire Equipment is operated properly and in accordance with any instructions of the Company from time to time;
 - 6.12.2 pay for all spare parts necessary for the proper running and operation of the Hire Equipment;
 - 6.12.3 not take or allow any of the Hire Equipment to be removed from the Site without receiving the prior written authority of the Company and, in the event of that authority being given, only on such terms as the Company deems fit;
 - 6.12.4 bear the cost of the repair or rectification of any damage to the Hire Equipment resulting from negligence or improper use of the Hire Equipment by the Customer or any person permitted by the Customer to use the Hire Equipment;
 - 6.12.5 not sell, assign, mortgage, let on hire or otherwise dispose of or part with possession of the Hire Equipment or part thereof nor attempt or purport to do so;
 - 6.12.6 permit the Company or its authorised representatives at all reasonable times to enter upon the Site to inspect and test the condition of the Hire Equipment.
- 6.13 In the event the Hire Equipment becomes temporarily unusable (other than as a result of the Customer's negligence or failure to comply with any instructions in respect of the Hire Equipment), the Company agrees to use its reasonable endeavors to make available suitable replacement Hire Equipment within 7 days (or so soon thereafter as is practicable) after the receipt of notification from the Customer requesting the same.
- 6.14 The Customer acknowledges that the Hire Equipment is supplied to the Company by a third party, accordingly the Company can give no warranty in respect of the Hire Equipment (other than as set out in Condition 16) but will to the extent possible pass on to the Customer the benefit of any warranties or guarantees given by such third party in respect of such Hire Equipment.
- 6.15 The Hire Equipment shall at all times remain the property of the Company and the Customer shall have no rights to the Hire Equipment other than for the purposes of the Contract

and the Customer shall not do or permit or cause to be done any matter or thing whereby the rights of the Company in respect of the Hire Equipment is or may be prejudicially affected.

- 6.16 On delivery of the Hire Equipment, all risk shall pass to the Customer who shall at all times from delivery until the Hire Equipment is delivered back to the Company in accordance with Condition 19.3.2 keep the Hire Equipment insured with an insurance company of good repute against loss or damage from all risks. The Customer shall notify its insurers that the Hire Equipment is on hire from the Company and request the insurers to endorse a note of such interest on the policy of insurance naming the Company as loss payee, shall on demand show to the Company the policy of insurance, the premium receipts and insurance certificate and shall not use or allow the Hire Equipment to be used for any purpose not permitted by the terms and conditions of the policy of insurance or do or allow to be done any act or thing whereby the insurance may be invalidated. If the Customer shall make default in the payment of any premium in respect of the insurance the Company may pay such premium in which event the Customer shall repay the amount thereof to the Company on demand. The Customer shall indemnify the Company against all loss or damage to the Hire Equipment not recoverable under the policy of insurance.

7. Hosting Services

- 7.1 Where the Customer agrees to purchase and the Company agrees to supply the Hosting Services the provision of this condition 7 shall apply. The Company shall in consideration of payment of the Charges provide the Hosting Services using reasonable care and skill in accordance with provisions detailed in this Contract and the SLA.
- 7.2 The Company shall be entitled at any time to make any emergency changes to the Hosting Services which are necessary to comply with any applicable safety, security or other statutory requirements, which do not materially affect the nature or quality of the Services. The Company shall inform the Customer as soon as reasonably practicable thereafter of any such changes that have been made.
- 7.3 The Company shall be entitled to require relocation of the Customer Equipment within the data floor upon written notification to and consultation with the Customer. The Company shall use its reasonable endeavors to ensure that any disruption caused to the Customer business is kept to a minimum and any necessary costs shall be borne by the Company.
- 7.4 The Customer does not acquire any rights of occupation or any other rights in relation to the Company's premises other than the right during the term of this Contract to install operate and retain the Customer Equipment in areas allotted within the Company's premises for its purchased Hosting Services.
- 7.5 In connection with the Hosting Services, the Customer undertakes:
 - 7.5.1 not to use any part of the Company's premises for any purpose other than in respect of location of the Customer Equipment and operation of the Customer's lawful business;
 - 7.5.2 to keep the allotted area and all fixtures and fittings therein in good condition and upon termination of this Contract return it to its original condition, fair wear and tear excepted;
 - 7.5.3 not to do anything at the Company's premises that would breach any health and safety, security or other regulations or put the Company in breach of its covenants or insurance conditions as notified by the Company to the Customer from time to time;
 - 7.5.4 not to exceed the specified maximum limit of electrical power usage to each rack no allow or do anything which would cause an interruption in power at the Company's premises or to the Services;
 - 7.5.5 not to do anything which may be dangerous, nuisance, inconvenience or other disturbance to other clients of the Company.
- 7.6 In connection with the Hosting Services, the Company agrees:
 - 7.6.1 to prepare its premises to a level consistent with industry standards for similar facilities;
 - 7.6.2 to allow representatives of the Customer access to the premises where the Customer Equipment is stored at any time in accordance with the entry requirements

specified in the Company's acceptable use policy unless in case of emergency or unless the Company has given prior notification to the Customer that such access is denied;

- 7.6.3 to ensure that the area allotted within the premises for the storage and operation of the Customer's Equipment has appropriate air conditioning, a climate of static humidity, a fire suppression system and appropriate security and electrical supplies to the levels specified in the SLA.

8. Managed Services

- 8.1 Where the Customer agrees to purchase and the Company agrees to supply the Managed Service, the provisions of this Condition 8 shall apply. The Company will use its reasonable endeavors to provide the Managed Services according to the provisions of the SLA and the Contract.
- 8.2 The Customer must ensure that Customer Equipment not supplied by the Company shall be agreed and approved in advance with the Company and connected and/or used in connection with the Managed Services in accordance with any applicable health and safety procedures in compliance with any relevant legislation.
- 8.3 In connection with the Managed Services, the Customer undertakes:
 - 8.3.1 not to use any part of the Company's premises for any purpose other than in respect of location of the Customer Equipment and operation of the Customer's lawful business;
 - 8.3.2 to keep the allotted area and all fixtures and fittings therein in good condition and upon termination of this Contract return it to its original condition, fair wear and tear excepted;
 - 8.3.3 not to do anything at the Company's premises that would breach any health and safety, security or other regulations or put the Company in breach of its covenants or insurance conditions as notified by the Company to the Customer from time to time;
 - 8.3.4 not to exceed the specified maximum limit of electrical power usage no allow or do anything which would cause an interruption in power at the Company's premises or to the Services;
 - 8.3.5 not to do anything which may be dangerous, nuisance, inconvenience or other disturbance to other clients of the Company.
- 8.4 In connection with the Managed Services, the Company agrees:
 - 8.4.1 to prepare its premises to a level consistent with industry standards for similar facilities;
 - 8.4.2 to allow representatives of the Customer access to the premises where the Managed Services are performed at any time in accordance with the entry requirements specified in the SLA unless in case of emergency or unless the Company has given prior notification to the Customer that such access is denied;
 - 8.4.3 to ensure that any area allotted within the premises for the storage and operation of the Customer's Equipment has appropriate air conditioning, a climate of static humidity, a fire suppression system and appropriate security and electrical supplies to the levels specified in the SLA.

9. Consultancy Services

- 9.1 Where the Company provides Consultancy Service to the Customer, the provisions of this Condition 9 shall apply.
- 9.2 The Company shall use reasonable endeavors to manage and complete the Consultancy Services, and to delivery any related deliverables to the Customer, in accordance in all material respects with the SLA.
- 9.3 The Company shall use reasonable endeavors to meet the performance dates specified in the SLA, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 9.4 The Company shall appoint a project manager who shall have authority to contractually bind the Company on all matters relating to the Consultancy Services. The Company shall use

reasonable endeavors to ensure that the same person acts as its project manager throughout the Consultancy Services, but may replace him or her from time to time where reasonable necessary in the interests of the Company's business.

- 9.5 The Customer shall:
 - 9.5.1 provide in a timely manner such access to the Customer's Site, personnel, data, and such office accommodation and other facilities, as is requested by the Company;
 - 9.5.2 provide in a timely manner such information as the Company may request, and ensure that such information is accurate in all material respects; and
 - 9.5.3 be responsible (at its own cost) for preparing the relevant Site for the supply of the Consultancy Services.
- 9.6 If The Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to the Company on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 9.7 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of six months after the completion of the Consultancy Services, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company and the provisions of this Condition 9.7 shall survive termination of the Contract for any reason.
- 9.8 Any consent given by the Company in accordance with Condition 9.7 shall be subject to the Customer paying to the Company a sum equivalent to 20% of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.
- 9.9 The Charges for the Consultancy Services are detailed in the Schedule and shall be payable by the Customer within 30 days of the Company's invoice.

10. Provision of Services

- 10.1 Any response times given by the Company for the provision of the Services and are subject to variation. Time for performance of the Services shall not be of the essence.
- 10.2 The Company shall use reasonable endeavors to advise the Customer of any risks involved in the provision of the Services but it is the Customer's responsibility to assess the level of that risk and take all appropriate precautions.

11. Customer Obligations

- 11.1 The performance by the Company of its obligations under the Contract is dependent upon the Customer performing the Customer Obligations. The Customer shall accordingly comply with the Customer Obligations and the Company shall have no liability to the Customer for any breach by it of the Contract which is caused directly or indirectly by any failure by the Customer so to comply.
- 11.2 The Customer agrees to supply and ensure the accuracy of all necessary information, materials or assistance as the Company may require for the provision of the Services.
- 11.3 The Customer shall comply with any applicable use policy for the Services notified to the Customer by the Company from time and available on the Company's website.

12. Charges

- 12.1 Subject to clause 12.2 the Set Up Charge, where applicable, shall be invoiced by the Company to the Customer on the Live Date and shall be paid by the Customer within 30 days.
- 12.2 Where there is a Set Up Charge and it is in excess of £999 plus VAT, a deposit of 50% of the Set Up Charge will be payable on order and the balance payable in accordance with Condition 12.1.
- 12.3 The Company shall invoice the Consultancy Charge in accordance with the SLA.
- 12.4 All Charges are (unless specified otherwise in the Schedule) exclusive of any applicable purchase tax, import and all other duties including but not limited to foreign exchange rates

(where applicable). Any specific bank and other charges involved in the transfer of payment to the Company shall be the responsibility of the Customer.

- 12.5 The Company reserves the right to increase the Charges on written notice to the Customer if:
 - 12.5.1 the cost to the Company of providing the Goods, Services or Hire Equipment increases;
 - 12.5.2 the Company incurs additional costs as a result of the cancellation, alteration or rescheduling of orders due to the Customer's instructions or lack of instructions;
 - 12.5.3 there is a fluctuation of exchange rates or importation duties and taxes which increases the cost to the Company of the Goods, Services or Hire Equipment imported into the United Kingdom for resale to the Company;
- 12.6 Notwithstanding Condition 12.5, the Company may increase the Charges without notice to the Customer if any work is deemed essential by the Company and cannot be delayed.
- 12.7 In the event that the Customer fails to make any payment of the Charges on the due date, the Company reserves the right to:
 - 12.7.1 give the Customer not less than 7 days' notice of its intention to cancel or suspend any further performance of the Services, the Customer's right to use the Domain Name and/or delivery, installation and/or licensing of Software and/or Hardware or Hire Equipment as appropriate;
 - 12.7.2 charge the Customer interest on amount outstanding at the rate of 8 per cent per annum above the base rate of the Bank of England (calculated at a daily rate) from the date the payment became due until actual payment is made (irrespective of whether the date of payment is before or after any judgment or award in respect of the same);
 - 12.7.3 terminate the Contract in accordance with Condition 19.2.1; and/or
 - 12.7.4 make a storage charge for any undelivered Goods or Hire Equipment at its current rates from time to time.

13. Support and Maintenance

- Where the Customer requires support and maintenance of any or all of the Hardware or Software then this shall be subject to the Company and the Customer entering into a maintenance agreement on the Company's standard terms and payment by the Customer of an annual support charge.

14. Intellectual Property Rights

- 14.1 All intellectual property rights and all other rights in the Services, Hardware, Software and/or Hire Equipment and in any other deliverables provided to the Customer in connection with the Services shall be owned by the Company or its licensors. The Company hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services, Hardware, Software, Hire Equipment and any other deliverables as is envisaged by the parties. If either party terminates the Contract under Condition 19, this licence will automatically terminate.
- 14.2 The Customer acknowledges that the Customer's use of right in the Software is conditional on the Company obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Customer.

15. Confidentiality and the Company's Property

- 15.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company or its agents, and any other confidential information concerning the Company's business or its products which the Customer may obtain, the Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Company, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 15.2 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer shall at all times be and remain the exclusive property of the

Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

- 15.3 This Condition shall survive termination of the Contract, however arising.

16. Warranties

- 16.1 The Company warrants to the Customer that it will use all reasonable care and skill in the provision of the Services and the selection of and installation of the Goods and Hire Equipment (where applicable).
- 16.2 The Company will throughout the Warranty Period rectify or remedy non-material defects, deficiencies or errors in the Services, Goods or Hire Equipment in accordance with the SLA.
- 16.3 Campbell shall not be liable for a breach of the warranties in Conditions 16.1 and 16.2 if:
 - 16.3.1 the Customer makes any use of the Services, Hire Equipment or Goods after notifying a defect to the Company;
 - 16.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Hire Equipment or (if there are none) good trade practice;
 - 16.3.3 the Customer misuses the relevant Goods or Hire Equipment or alters or repairs the relevant Goods or Hire Equipment without the written consent of the Company; or
 - 16.3.4 the defect arises due to damage in transit, the use of an incorrect voltage, power supply or signal, abnormal environment operating conditions, or due to defects, errors or failures in ancillary equipment;
- 16.4 Any repaired or replacement Goods or Hire Equipment shall be under warranty for the unexpired portion of the Warranty Period.
- 16.5 The Company shall not be liable for any damage or defect to the Goods or Hire Equipment caused by improper use of the Goods or Hire Equipment or use outside their normal application.
- 16.6 The Customer acknowledges that software in general is not error-free and agrees that the existence of such errors in the Software shall not constitute a breach of the Contract.
- 16.7 To the extent permitted by the applicable law, the Company disclaims all other warranties with respect to the Goods and the Services and Hire Equipment either express or implied, including but not limited to any implied warranties of satisfactory quality or fitness for any particular purpose.

17. The Company's Liability

- 17.1 The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - 17.1.1 any breach of its contractual obligations arising under the Contract;
 - 17.1.2 the infringement of any third party intellectual property rights; and
 - 17.1.3 any representation (except fraudulent) or tortious act or omission including negligence arising under or in connection with the Contract.
- (an "Event of Default")
- 17.2 The Company's liability to the Customer for death or injury resulting from its own or that of its employees' agents' or sub-contractors' negligence or fraudulent misrepresentation shall not be limited.
- 17.3 Subject to Condition 17.2, the Company shall not be liable to the Customer in respect of:
 - 17.3.1 Consequential Loss even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same;
 - 17.3.2 errors which are made as a result of instructions of the Customer;

- 17.3.3 any loss avoidable by the Customer through reasonable conduct, including backing up all data, using appropriate anti-virus measures and following any other reasonable advice of the Company;
- 17.3.4 any Event of Default caused as a result of a failure by the Customer to comply with the Customer Obligations.
- 17.4 Subject to the Conditions 17.2 and 17.3, the Company's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the amount payable by the Customer under the Contract.
- 17.5 Nothing in this Condition shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

18. Indemnities

- 18.1 The Customer undertakes fully and effectively to indemnify and keep indemnified at all times the Company against all actions, proceedings, costs, claims, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred or paid by the Company directly or indirectly in respect of:
 - 18.1.1 access to and/or use of the Services or the Internet by the Customer or by Co-Customers;
 - 18.1.2 any information, data or material produced, transmitted or downloaded by the Customer or Co-Customers;
 - 18.1.3 any breach by the Customer or by Co-Customers of any of the provisions of the Contract or of any law, code or regulation relating thereto, to the Internet or the Customer;
 - 18.1.4 the illegal sale of any products or services by the Customer in any jurisdiction;
 - 18.1.5 the non-compliance by the Customer of any laws or regulations in any jurisdiction which apply to the use of the Internet;
 - 18.1.6 the failure by the Customer to meet any order placed by its customers or to fulfill any of the Customer's obligations to its customers; and
 - 18.1.7 the infringement by the Customer of any third party rights in using or registering or attempting to register the Domain Name.
- 18.2 The provisions of this Condition 18 shall survive termination of the Contract for whatever reason.

19. Termination

- 19.1 The Contract, to the extent that it relates to the provision of the Services, hire of Hire Equipment and/or the licensing of Software, shall continue for the Initial Period and shall automatically continue (unless terminated in accordance with Condition 19.2 below) for each Renewal Period thereafter unless and until either party serves on the other not less than 30 days notice of its intention to terminate the Contract (or any part thereof) such notice to expire at the end of either the Initial Period or a Renewal Period.
- 19.2 Notwithstanding any provisions herein contained the Contract may be terminated forthwith by either party by notice in writing from the party not at fault if any of the following events shall occur:-
 - 19.2.1 if the other party shall at any time be in breach of the Contract and shall fail to remedy such breach (if capable or remedy) within thirty (30) days from receipt of notice in writing from the first party specifying such default;
 - 19.2.2 if the other party shall suffer an Insolvency Event.
- 19.3 Within 7 days of termination (for whatever reason) of the Contract, the Customer shall:
 - 19.3.1 return or destroy (as the Company shall instruct) all Software licensed to the Customer during the continuance of the Contract and all and any copies made of the whole or any part of the same;
 - 19.3.2 return to the Company any Hardware and Hire Equipment or other equipment which remains the Company's property (including all manuals and

accessories) to the Company at such address as the Company may direct in good order and in good working condition and at the Customer's expense and risk

- 19.3.3 furnish the Company with any passwords or other authentication required to access and reconfigure such Hardware or equipment;
- 19.3.4 remove any Customer Equipment from the Company's premises without delay, where relevant.
- 19.4 Notwithstanding termination, the Customer shall continue to be liable to pay a sum equivalent to the Charges otherwise payable under the Contract in respect of any Customer Equipment which has not been removed from the Company's premises, such a sum to be calculated on a daily rate from the date of termination up to the date when the Customer Equipment is removed.
- 19.5 The Company reserves the right to:
 - 19.5.1 remove the Customer Equipment from the Company's premises if the Customer has failed to remove it after the expiry of one month from the termination date; and/or
 - 19.5.2 exercise a lien over the Customer Equipment in respect of any unpaid Charges beyond the termination date and shall be entitled to sell the Customer Equipment if remains on the Company's premises after the expiry of two months from the termination date in order to recoup any unpaid Charges.
- 19.6 Termination of the Contract will be without prejudice to any accrued rights of either party and will not affect obligations which are expressed not to be affected by expiry or termination hereof.

20. Force Majeure

- Notwithstanding anything contained in the Contract if the Company shall be prevented or delayed whether directly or indirectly, in the performance of any of its obligations under the Contract by reason of any cause whatsoever beyond the Company's control (including without limitation any prevention or delay caused by an act or omission of the Customer, industrial dispute or the unavailability of spare parts), the Company shall be excused from the performance of its obligations under the Contract for so long as such prevention or delay shall continue.

21. Technical Disputes

- In the event of any technical dispute between the parties, either party may at any time by notice in writing refer the matter to an Independent Expert who shall act as expert not arbitrator, whose decision shall be final and binding on the parties and whose costs shall be borne as he may in his absolute discretion determine.

22. Notices

- 22.1 Any notice required to be given by either party to the other shall unless otherwise stated in the Contract be in writing and may be given by hand or sent by first class prepaid letter post, facsimile transmission or any comparable means of communication to the other party at the address stated overleaf or such other address as may be subsequently notified to the other party.
- 22.2 Any notice will be deemed to have been received if by hand upon delivery, if by post three days after posting, and if by any instantaneous method of transmissions upon being sent provided that it was reasonably believed by the sender that the recipient would successfully receive such a transmission.

23. Variations

- The Company shall be entitled to vary the terms of the Contract to take effect from the commencement of any Renewal Period provided that it serves notice on the Customer of such changes not less than 45 days prior to the commencement of the Renewal Period, and in the event that the Customer does not wish to accept such changes, the Customer may exercise its right to terminate the Contract pursuant to Condition 19.1.

24. General

- 24.1 Nothing in the Contract is intended to or shall operate a partnership between the parties, or to authorise either party to act as agent for the other and neither party shall have authority to act in the name on behalf of or otherwise to bind the other in any way (included but

not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- 24.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 24.3 The Contract is made for the benefit of the parties to it and (where applicable) their permitted successors and assigns and is not intended to be enforceable by anyone else.
- 24.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 24.5 Save as provided in this Condition 24.5 the Contract shall be governed by the laws of England and the parties submit for the exclusive benefit of the Company to the exclusive jurisdiction of the English courts, but the provisions of this Condition 24.5 are for the benefit of the Company, who shall not be prevented from commencing proceedings in any other court of competent jurisdiction.
- 24.6 No Condition of the Contract shall apply to the extent that it effects the statutory rights of consumers where the Customer is, for the purposes of any such statutory right, a consumer.
- 24.7 The Customer shall not, without the prior written consent of the Company, assign, transfer charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Company may at any time assign transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.