

MESH INTERNET LIMITED

Business User - General Terms and Conditions

1 Definitions

In this Contract:

"Acceptable Use Policy" means Mesh Internet's policy for the use of the Services as set out at Schedule 4 and on the Mesh Internet Website www.mesh-internet.co.uk/auip and as may be revised by Mesh Internet from time to time by posting any updated version on the Mesh Internet Website.

"Charges" mean the charges payable by the Customer to Mesh Internet for the provision of the Services as set out in the Charges Schedule or any revised version of the Charges Schedule notified to the Customer in accordance with Clause 7.2 together with all applicable taxes and any interest due in accordance with Clause 7.3.

"Committed Period" means, in respect of each Service, the minimum period of time that the Customer has committed to receive and pay for that Service.

"Customer Equipment" means any hardware and/or software owned, controlled or licensed by the Customer which is to be provided to Mesh Internet by the Customer for the purposes of providing the Services and which will be located at an Mesh Internet Site.

"Equipment" means any hardware and/or software used by Mesh Internet to provide the Services.

"Facility Limit" means the web space, bandwidth or other measure indicated in the Services Schedule as the applicable Facility Limit for a Service.

"Mesh Internet Site" means the premises owned or controlled by Mesh Internet at which any Mesh Internet Equipment and/or Customer Equipment is located or is to be located for the purpose of providing the Services.

"Mesh Internet Service Help Desk" means the telephone helpdesk support to be provided by Mesh Internet as notified to the Customer from time to time.

"Mesh Internet Website" means the website located at www.mesh-internet.co.uk or such other website as may be notified by Mesh Internet.

"Service" means any one of the services described in the Services Schedule and "Services" means any combination of two or more such services.

"Service Credits" means the amounts payable by Mesh Internet to the Customer in accordance with Clause 3 and the Services Schedule.

"Service Failures" means any failure or error or defect in the provision of the Services by Mesh Internet but excludes failures, errors or defects arising from, caused by or contributed to by acts or omissions of the Customer or third parties including other providers of telecommunications, computers or other equipment or services including internet services.

"Start Date" means the target date for the commencement of the provision of the Services to the Customer.

2 Services provided by Mesh Internet

2.1 Mesh Internet will provide the Services in accordance with the terms of this Contract.

2.2 Mesh Internet will use reasonable skill and care when providing the Services.

2.3 The Services are provided for use by the Customer in the course of the Customer's business.

3 Service Levels

3.1 Mesh Internet does not guarantee that the Services will be continuously available to the Customer or free from Service Failures.

3.2 Where the Customer believes that it is experiencing a Service Failure it must immediately report this to Mesh Internet via Mesh Internet's Service Helpdesk providing sufficient information to enable Mesh Internet to investigate the problem. Mesh Internet will log the time of receipt of all reports.

3.3 Where Mesh Internet spends time investigating a fault reported by a Customer and concludes that there has been no Service Failure Mesh Internet reserves the right to charge the Customer for all reasonable costs and expenses incurred in investigating the report and the Customer agrees to pay such charges.

3.4 Where, as a result of a Service Failure, an applicable Service Level specified in the Service Standards Schedule is not achieved Mesh Internet will pay to the Customer a Service Credit or will issue a credit note to the Customer for a sum equivalent to the amount of the Service Credit.

3.5 The duration of any Service Level failure for the purposes of calculating Service Credits will be measured from the time the Customer's fault report is logged by the Mesh Internet Service Helpdesk to the time Mesh Internet can demonstrate that the Service Level has been restored.

3.6 Service Credits will be the maximum extent of Mesh Internet's liability and the Customer's exclusive remedy in respect of any failure to achieve Service Levels and all other rights, remedies and liabilities are excluded to the maximum extent permitted at law.

4 The Customer's Use of Services

4.1 The Customer agrees that it will not use the Services in a way which would:-

- (a) contravene any laws or regulations;
- (b) contravene Mesh Internet's Acceptable Use Policy;
- (c) compromise the security of the Mesh Internet Equipment or other systems including by introducing viruses or failing to employ appropriate security procedures;
- (d) involve the sending of unsolicited marketing or advertising materials;
- (e) result in the transmission or storage of any material of a pornographic, obscene, defamatory, menacing or offensive nature or which would result in the breach of any third party's intellectual property rights, confidential information or privacy;
- (f) breach or cause Mesh Internet to breach any applicable data protection legislation including but not limited to the Data Protection Act 1998;
- (g) exceed the Customer's Facility Limit.

4.2 The Customer will indemnify Mesh Internet against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by Mesh Internet arising from any breach of the Customer's obligations under this Clause and for all costs and expenses reasonably incurred by Mesh Internet in investigating and defending itself in relation to any such claims, proceedings or threatened proceedings.

4.3 Except to the extent Mesh Internet is providing a Backup Service as a part of the Services, the Customer is solely responsible for safeguarding its data by taking backup

copies, maintaining a disaster recovery process and through any other means the Customer believes appropriate.

5 Mesh Internet Equipment

5.1 Mesh Internet Equipment is owned by Mesh Internet, or its suppliers or licensors, and no title in any Mesh Internet Equipment will pass to the Customer under this Contract.

5.2 Where Mesh Internet Equipment is being provided for installation and use at the Customer's site the Customer will be responsible for the installation of the Mesh Internet Equipment, its maintenance and prompt return to Mesh Internet on the termination of the Services. The Customer grants Mesh Internet a right of access to the Customer's site, on reasonable notice, to inspect the Mesh Internet Equipment and to recover it in the event that the Customer fails to return it on request.

5.3 The Customer will indemnify Mesh Internet against any claims, proceedings or threatened proceedings from third parties (including Mesh Internet's customers) and against any loss or damage suffered by Mesh Internet arising from the Customer's use of the Mesh Internet Equipment where such claims and/or losses arise from the acts or omissions of the Customer or its agents or subcontractors and for all costs and expenses reasonably incurred by Mesh Internet in investigating and defending itself in relation to any such claims, proceedings or threatened proceedings.

6 Customer Equipment

6.1 Except as expressly set out in this Contract, the Customer will be responsible for providing all necessary hardware, software, network facilities and telecommunications services to access and make use of the Services provided by Mesh Internet.

6.2 Where Customer Equipment is located at a Mesh Internet Site the Customer will remain fully responsible for the risk to the Customer Equipment. The Customer undertakes to obtain and maintain the following insurance in respect of the Customer Equipment:-

- (a) cover in an amount equal to the full replacement value of the Customer Equipment against fire, theft, accidental damage and all other risks; and
- (b) public liability insurance with cover in an amount not less than £5,000,000 per annum.

6.3 On request the Customer will provide Mesh Internet with certificates of cover in respect of the required insurance and evidence of payment of premiums.

6.4 Customer is responsible for:-

- (a) Ensuring that the Customer Equipment meets the minimum technical specifications as notified by Mesh Internet required to be compatible with the Services;
- (b) Ensuring that the Customer Equipment is supplied and maintained in a safe condition, in good working order and that it complies with all applicable legislation or regulations;
- (c) Obtaining all required licenses or other consents to enable Mesh Internet to have access to and use of the Customer Equipment for the purpose of providing the Services including but not limited to any license rights in respect of software which forms a part of the Customer Equipment. The Customer is solely responsible for any costs associated with obtaining such licenses and consents;
- (d) Delivering the Customer Equipment to the Mesh Internet Site prior to the Start Date and promptly removing it from the Mesh Internet Site on the termination of this Contract. The Customer is solely responsible for transportation, installation and de-installation costs associated with the Customer Equipment.

6.5 Mesh Internet has a lien over any Customer Equipment to secure all sums due and unpaid under this Contract and the Customer will not be entitled to remove the Customer Equipment from the Mesh Internet Site unless and until Mesh Internet has received all outstanding sums owing to it.

6.6 Mesh Internet reserves the right to relocate the Customer Equipment to an alternative Mesh Internet Site on giving the Customer reasonable notice.

6.7 The Customer will indemnify Mesh Internet against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by Mesh Internet arising from Mesh Internet's possession or use of the Customer Equipment or from the location of the Customer Equipment at the Mesh Internet Site and for all costs and expenses reasonably incurred by Mesh Internet in investigating and defending itself in relation to any such claims, proceedings or threatened proceedings.

7 Charges and Payment

7.1 The Customer will pay Mesh Internet the Charges as specified in the Charges Schedule or as subsequently notified to the Customer in accordance with Clause 7.2. Charges will be payable with effect from the date that a Service or any part of a Service is first made available to the Customer.

7.2 Mesh Internet may change the Charges for any Service by giving the Customer 30 days notice of such change. The revised Charges will apply to all Services provided after the effective date of the notice of change.

7.3 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer will be responsible for paying VAT and other applicable taxes which will be included in Mesh Internet's invoices at the applicable rate(s).

7.4 Mesh Internet will issue invoices for the Services in accordance with the payment terms specified in the Charges Schedule.

7.5 The Customer will pay invoices within 30 days of the date of the invoice. Mesh Internet may charge interest on all overdue amounts on a daily basis at a rate of 4% above the base rate of the Royal Bank of Scotland plc from time to time to run from the due date of payment until receipt by Mesh Internet of the full amount (including any accrued interest) whether before or after judgement in respect of the overdue amount.

7.6 Where under this Contract a Service Credit or other sum of money becomes payable by Mesh Internet to the Customer, Mesh Internet shall be entitled to deduct that sum from Charges due from the Customer to Mesh Internet from time to time. Mesh Internet will show any such deductions as a credit in the invoice issued by Mesh Internet following the due date for payment of the sum owed by Mesh Internet to the Customer.

8 Security and Backup Services

8.1 The Customer is responsible for the security of its use of the Services including but not limited to for protecting all passwords, backing-up all data, employing appropriate security devices, including virus checking software, and having disaster recovery processes in place.

8.2 Where as part of a Service Mesh Internet provides Mesh Internet Equipment or services which have the principal purpose of safeguarding the security of the Services received by the Customer, Mesh Internet will use reasonable efforts to ensure that, as at the date of installation of the Mesh Internet Equipment or the provision of the services that the

Mesh Internet Equipment and/or services comply with the agreed specifications for the Mesh Internet Equipment and/or services. However, Mesh Internet provides no guarantee or warranty with respect to the security of the Services.

8.3 Where the Customer is or becomes aware of any matters which it knows or ought reasonably be expected to know constitute a threat to the security of the Services the Customer will immediately advise Mesh Internet of such matters.

9 Term and Start Date

9.1 This Contract will commence on the date when both parties have executed the Services Agreement and will continue for a minimum period of 24 months and thereafter until terminated in accordance with its terms.

9.2 Mesh Internet will use its reasonable efforts to begin providing the Services by the Start Date, if any, stated in the Services Agreement. However, the Start Date and any other dates given in this Contract are estimates and are provided for planning purposes only. Mesh Internet will have no liability for any failure to meet the Start Date or any other date as time is not of the essence in relation to any matter under this Contract.

10 Termination

10.1 If the Customer fails to pay any Charges or fails to comply with its obligations these failures will be deemed to be material breaches for the purposes of Clause 10.2.

10.2 Mesh Internet may terminate this Contract with immediate effect by notice in writing if the Customer:

- (a) fails to pay any sums due to Mesh Internet within 7 days of receiving written notice from Mesh Internet indicating the sums due and demanding payment;
- (b) is in material breach of this Contract which breach is capable of remedy and fails to remedy that breach within 30 days of receiving the notice specifying the breach;
- (c) is in material breach of this Contract and that breach cannot be remedied;
- (d) commits persistent breaches of the Contract;
- (e) makes any voluntary arrangements with its creditors or becomes subject to an administrative order or goes into liquidation, whether voluntary or compulsory (other than for the purposes of reconstruction or amalgamation) or an encumbrancer takes possession of or a receiver is appointed in respect of any of its assets.

10.3 In the event of termination by Mesh Internet in accordance with this Clause during the Committed Period, the Customer will, in addition to paying any unpaid Charges due as at the date of termination, be liable to pay Mesh Internet the cancellation charges as specified in the Charges Schedule.

10.4 On termination of the Contract each party will return to the other party any Confidential Information which it has in its possession.

11 Cancellation and Suspension

11.1 Either party may cancel any individual Service or this Contract at any time by giving the other party 90 days written notice of cancellation.

11.2 Subject to Clause 11.3, where the Customer cancels a Service during the Committed Period for that Service or cancels the Contract during the Committed Period for any Service, the Customer will pay the charges applicable to be unexpired portion of the Committed Period(s).

11.3 Where the Customer cancels a Service or the Contract as a result of changes made to this Contract or to the Services by Mesh Internet, and where the changes have a material adverse effect on the Customer's enjoyment of the relevant Services the Customer will not be liable for any charges arising as a direct result of such cancellation.

11.4 Mesh Internet may suspend or cancel the provision of any Services if:

- (a) technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;
- (b) the Customer fails to meet any of its obligations under this Contract;
- (c) if and to the extent that in Mesh Internet's opinion the Customer's conduct is likely to result in the breach of any law or is otherwise prejudicial to Mesh Internet's interests.
- (d) necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance.
- (e) Mesh Internet has reasonable cause to believe that the Customer or any third party is acting in breach of the Acceptable Use Policy.
- (f) it gives 60 days written notice of its intention to cancel.

11.5 Mesh Internet will, where practical, give the Customer notice of its intention to suspend the Services and, in relation to suspension for the reasons stated in Schedules 3 and 4, will restore the Services as soon as it is reasonably able to do so.

12 Force Majeure

12.1 Neither party will be liable to the other for any delay in performing or failure to perform any of its obligations under this Contract (other than the obligation to pay the Charges) which occurs as a result of circumstances beyond a party's reasonable control. For the avoidance of doubt, circumstances beyond Mesh Internet's reasonable control include but are not limited to power failures, non-availability of any third party telecommunication services, breakdown of any equipment not supplied by Mesh Internet.

13 Intellectual Property

13.1 Except as expressly set out in this Contract, all intellectual property rights in Mesh Internet Equipment will remain with Mesh Internet or its suppliers or licensors.

13.2 Where Software is provided to enable the Customer to make use of the Services Mesh Internet grants to the Customer a non-exclusive non-transferable licence to use the Software solely for the purpose of receiving the Services. Where any additional terms and conditions apply to the Customer's use of Software Mesh Internet will make these known to the Customer and the Customer will, if requested, sign any agreement reasonably required to protect the owner's rights in the Software.

13.3 The Customer will not copy, decompile or modify the Software without Mesh Internet's prior written consent (except as permitted by law) and will not distribute or disclose the Software to any third party.

13.4 The Customer acknowledges that Mesh Internet has no obligation to review or edit any Customer information or third party information which the Customer stores on or transmits through Mesh Internet Equipment or uses in connection with the Services. However, Mesh Internet reserves the right to access, retain and disclose copies of such information for the purposes of:-

- (a) Maintaining and improving the Services Mesh Internet offers;
- (b) Complying with any applicable laws, regulations, statutory instruments or the terms of Mesh Internet's licences and contracts;
- (c) Observing the performance of the Services including for Service Levels;

- (d) Retaining a record of activity on Mesh Internet's Equipment or systems;
- (e) Complying with any request for information or disclosure from a court or other appropriately authorised body.

(f) Ensuring that the Customer is complying with Mesh Internet's Acceptable Use Policy.

14 Confidentiality

14.1 Neither party will disclose to any third party without the prior written consent of the other party any confidential information which is received from the other party as a result of this Contract. Both parties agree that any confidential information received from the other party will only be used for the purposes of providing or receiving services. These restrictions will not apply to any information which:

- (a) is or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 14; or
- (b) is acquired from a third party who owes no obligation of confidence in respect of the information; or
- (c) is or has been independently developed by the recipient.

14.2 Notwithstanding Clause 14.1 Mesh Internet will be entitled to disclose the Customer's confidential information to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose such confidential information.

14.3 Mesh Internet reserve the right to reference the Customer by name for sales and marketing purposes either verbally or written unless instructed in writing by the Customer otherwise.

15 Limitation of Liability

15.1 Mesh Internet accepts liability to a limit of £2,000,000 for death or personal injury arising from its own negligence or for any fraudulent pre-contractual misrepresentation on which the Customer can be shown to have relied.

15.2 Mesh Internet's liability to pay Service Credits in accordance with Clause 3 will be the maximum extent of Mesh Internet's liability and the Customer's sole remedy for any Service Failures.

15.3 Subject to Clause 15.1 and 15.2, Mesh Internet is not liable to the Customer whether under this Contract, tort (including negligence) or otherwise for direct or indirect loss of profits, anticipated profits, business, goodwill or anticipated savings or for any indirect or consequential loss or damage including but not limited to claims against the Customer from third parties and loss of or damage to the Customer's data even if such loss was reasonably foreseeable or Mesh Internet had been advised of the possibility of the Customer incurring the loss.

15.4 Subject to Clause 15.1, Mesh Internet's liability to the Customer in contract, tort (including negligence) or otherwise in relation to or arising out of this Contract is limited to the greater of £25,000 (twenty five thousand pounds) or 50% of the annual aggregate Charges arising under this Contract for all events, claims, losses however arising during the term of this Contract. Service Credits paid or credited by Mesh Internet to the Customer will be taken into account for the purposes of calculating the limitation amounts set out in this Clause 15.

15.5 Except as expressly set out in this Contract and to the extent permissible by law all other warranties, terms and conditions whether express or implied by law, custom or otherwise are excluded.

15.6 Mesh Internet is not liable to the Customer in contract or tort (including negligence) for any acts or omissions of the Customer or any party other than Mesh Internet including other providers of telecommunications, computers or other equipment or services including internet services.

15.7 Each provision of this Contract excluding or limiting Mesh Internet's liability operates separately. If any provision of this Contract is held to be invalid in whole or part such provision will be deemed not to form a part of the Contract. In any event the enforceability of the remainder of the Contract will not be affected.

15.8 The Customer must bring any legal proceedings against Mesh Internet arising from this Contract within 3 years from the date when the Customer first becomes aware or ought reasonably to have become aware of the facts giving rise to the liability or alleged liability or within the relevant statutory limitation period whichever is the earlier.

15.9 Subject to Clause 15.8, no delay in enforcing any of the provisions of this Contract will affect or restrict either party's rights arising under this Contract. No waiver of any provision of this Contract will be effective unless made in writing.

16 Assignment

16.1 Mesh Internet may assign, sub-contract or otherwise transfer this Contract or any part of it to any third party in its absolute discretion.

16.2 The Customer may not assign, sub-licence or otherwise transfer this Contract or any of its rights or obligations arising under it without the written consent of Mesh Internet.

17 Entire Agreement

17.1 This Contract supersedes all prior agreements, undertakings and representations between the parties and constitutes the entire agreement between the parties relating to its subject matter (except that neither party excludes liability for any fraudulent pre-contractual misrepresentations on which the other party can be shown to have relied).

17.2 A third party which is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

17.3 In the event and to the extent of any conflict between the Schedules, the General Terms and Conditions, the Special Terms and Conditions and any Schedules then the order of precedence will be the Special Terms and Conditions, Schedules, General Terms and Conditions.

18 Applicable Law and Resolving Disputes

18.1 This Contract will be construed in accordance with and governed by the laws of England.

18.2 In the event of any dispute relating to or arising from this Contract the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

19 Notices

19.1 Notices must be in writing and delivered by pre-paid first class post; or registered post; or recorded delivery addressed to the other party at the address shown in the Services Agreement or any other address as notified in accordance with this Clause.

19.2 Notices will be deemed to be served on the second day after sending.

20 Changes to Services and Contract

20.1 Mesh Internet may at any time on 35 days written notice to the Customer vary any of the Schedules, General Terms and Conditions, the Special Terms, the Charges or any other provisions of this Contract including the technical specification of the Services.

