

---

**Nitrex Ltd**

**Policy Statement**

---

**January 1st 2007**

**Standard Terms and Conditions**



## Terms and Conditions of Business

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 In these Conditions:

**"Accepted Order"** means an Order signed by Customer which has been accepted by the Company, acceptance being indicated by an Order being signed by the Company and returned to the Customer;

**"Agreement"** means any agreement executed by the parties made subject to these Conditions that shall incorporate these Conditions;

**"BT"** means British Telecommunications plc;

A **"Call"** is defined as the connection of one or more parties via the networks or the PSTN by which the ability to transmit or receive digital data or other information is made possible. This applies to one and two way traffic and includes any recorded and/or automated transmissions and or the reception of data;

**"Collocated Equipment"** means any of equipment owned or leased by the Company, its agents, service providers or sub-contractors sited at the Company's, Customer's or other third party's premises as required to provide the Service;

**"Company"** means Nitrex LTD (company registered number 04422395) of 41 High Street, Walton On The Naze, Braintree Essex CO14 8BG;

**"Customer"** means any person or organisation with whom the Company enters into an Agreement subject to these Conditions;

**"Customer Equipment"** means any equipment owned or leased by the Customer and is used in connection with the provision of a collocation service, or which is the supplied by the Company for purchase by the Customer under an Accepted Order;

**"Internet Address"** means such sequence of alpha numeric or numeric only characters as are used from time to time by the Customer to identify himself and or his computer or computers to other users of other computers to which the Company is from time to time connecting or otherwise forwarding data to and from the Customer;

**"Internet"** means the global data network comprising interconnected networks using TCP/IP to which the company is connected and provides access to its Customers;

**"ISP"** means an Internet Service Provider;

**"Leased Equipment"** means any equipment owned by the Company and leased to the Customer;

**"Network Operator"** means the legal entity or entities responsible for operation of a communications network;

## Standard Term and Conditions

**"OLO"** means a Network Operator other than BT (or Other Licensed Operator);

**"Password"** means the alphanumeric characters chosen and used exclusively by the Customer at his own risk for the purpose of securing and maintaining the exclusivity of his access to the Company's service;

**"PDN"** means the Public Data Network operated by a PTO as defined by the Telecommunications Act 1984;

**"POLO"** is the pence per minute "payment to OLO" rate payable by BT to the Company's telecommunication provider from time to time for the termination of a Call originated on the BT telecommunications system to a Customer as set out in BT's carrier price list from time to time;

**"Premises"** shall mean the premises listed in the applicable Schedules attached hereto which the applicable Collocated Equipment, Customer Equipment or Lease Equipment described in such Schedules have been stored by Customer.

**"PSTN"** means the Public Switched Telephone Network operated by a PTO as defined by the Telecommunications Act 1984;

**"PTO"** means a Public Telecommunications Operator as defined by the Telecommunications Act 1984;

**"Retail Rates"** mean the rates for retail telecommunications services provided by BT as set out in BT's retail price list from time to time;

**"RIPE"** means the Réseaux IP Européens - RIPE administer and provide technical co-ordination necessary to enable the operation of a pan-European IP network. They manage the allocation of all IP's in Europe;

**"Service Commencement Date"** means the date identified as the delivery date on the company invoice to the Customer;

**"Service"** means the services described herein and in the current Company literature together with such Value Added Services to be provided by the Company to the Customer as may be mutually agreed upon by Company and Customer under an Accepted Order, but in any event include the provision of data network services using TCP/IP. Representations made by the Company's distributor will not form part of this agreement unless confirmed in writing prior to purchase of the service;

**"TCP/IP"** is the abbreviation for Transmission Control protocol/Internet Protocol;

**"Transit Charges"** means the charges payable to BT by the Company's telecommunications provider for the transit of Calls originated on an OLO's system and terminated on an OLO's system, as set out in BT's carrier price list from time to time;

**"Upgrade Usage Charges"** means such charge for such predetermined unit of time and or volume of data together with any charges related to Value Added Services from time to time provided by the Company in each case at the rates set out or referred to in the Company's published tariffs and or such as may be agreed in writing with between the Customer and the Company;

## Standard Term and Conditions

**"User Name"** means such sequence of alpha numeric characters as are used from time to time by the Customer to identify himself to other users of other computers to which the Company is from time to time connecting or otherwise forwarding data to and from the Customer;

**"U"** – one 'U' in relation to space within server racks refers to a vertical height of 44.45mm

**"Value Added Service"** means the provision of a service other than simple connectivity that may be detailed in the current Company brochure and as mutually agreed upon by the parties in an Accepted Order.

1.2 In these Conditions and an Agreement, unless the context otherwise requires or is otherwise specified:

1.2.1 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

1.2.2 words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and un-incorporate; and (in each case) vice versa;

1.2.3 any reference to a party includes a reference to its successors in title and permitted assigns;

1.2.4 references to clauses and schedules are to be construed as references to the clauses of, and schedules to, these Conditions or the Agreement;

1.2.5 the headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of these Conditions or the Agreement.

1.3 In the event of any conflict (whether as to interpretation or otherwise) between the provisions of an Accepted Order, the Agreement, these Conditions and the provisions of any other agreement or document referred to in this Agreement the following order of precedence shall apply:

1.3.1 these Conditions in the absence of an express and specific statement that a particular term of the Accepted Order or Agreement is to prevail;

1.3.2 the Accepted Order;

1.3.3 the Agreement; and

1.3.4 that other agreement or document.

1.4 A third party who is not a party to the Agreement has no right to enforce any term of it.

## 2. ACCEPTANCE OF ORDERS

The Company reserves the right to reasonably refuse any Order for subscription, services or goods prior to acceptance of any such Order.

## Standard Term and Conditions

### **3. THE SERVICE**

- 3.1 Subject to these Conditions the Company will timely:
  - 3.1.1 connect the Customer to the Company's network Internet points and service;
  - 3.1.2 register the Customer's Domain Name (only if requested in writing by the Customer); and
  - 3.1.3 provide the web site hosting service (only if requested in writing by the Customer); and
  - 3.1.4 provide the Customer with the allocated space at the Premises for storage and operation of the applicable Collocated Equipment, Customer Equipment and/or Lease Equipment as may be mutually agreed upon by the parties in the applicable Schedules attached hereto.
- 3.2 Domain Name registration is subject to the availability of the requested Domain Name, and the Customer accepts that registration can take from 1 to 40 working days from the date of payment and receipt of full details.
- 3.3 Domain name renewals are the responsibility of the Domain Owner. The Domain Owner must not rely upon receiving notification from domain registrars, agents or resellers for domain renewals. It is the responsibility of the Domain Owner to ensure the registrar has received the renewal fee within the existing registration period.
- 3.4 The Customer acknowledges that the web sites hosting service will take up to 2 weeks from the date of payment until it is fully operational.
- 3.5 The Company reserves the right, without prior notice, to perform vulnerability tests on systems residing on IP address space belonging to The Company which may be allocated for the Customer's use, provided that no such tests shall be performed without written approval of Customer if such tests may materially adversely affect the Service provided to The Customer or to The Customer's Equipment. The purpose of such testing includes, but is not limited to, testing of mail servers or proxy servers for unrestricted third party relaying. The Company will use reasonable efforts to ensure that such testing will not adversely affect Service provided to The Customer and where possible, will not compromise the security of The Customer's network. The Customer is responsible for correcting any system vulnerability upon notification unless such system vulnerability is caused by The Company. The Customer must immediately terminate operations of a known compromised system or upon verbal or written notification of such by The Company.
- 3.6 The Customer is responsible for any reasonable costs incurred as the result of any modification of, alteration of any nature to any hardware or software configuration provided as part of The Company's Service(s), provided that no such costs for modification or alteration shall be incurred without The Customer's prior written consent.
- 3.7 The Company reserves the right to put in place spam monitoring and control systems to reduce Spam sent to and from Customers.
- 3.8 The only e-mail which The Customer will send from The Company's servers is e-mail which The Customer sends to a single addressee, to a group consisting only of The

## Standard Term and Conditions

Customer's friends and family members or individuals with whom The Customer has an established professional relationship, or to a group for whom The Customer has the verified permission of each recipient to include them in a mailing list. Should The Customer cause e-mail that does not meet these criteria to be sent through The Company's servers, The Customer understands and agrees that this is a breach of The Company's Terms of Service, which may result in The Customer's account being terminated, with or without notice, and/or legal action against The Customer for mis-use.

- 3.9 The Company shall make reasonable attempts to respond to complaints made by The Customer regarding the receipt of Spam or other harassing e-mail or, in the case of a Customer under the age of 18, complaints from such The Customer or from such The Customer's parent or guardian regarding the receipt of Spam, other harassing e-mail, or e-mail containing any age inappropriate communications or content where that complaint relates to the account of The Customer
- 3.10 The Company shall procure the provision of connectivity to the Customer as soon as reasonably possible and except as set forth below, by the date mutually agreed upon by the parties for such connection. Any date indicated by The Company as a date for connection may not be changed except for unforeseen circumstances not caused by The Company's fault or negligence. Accordingly the Company will not be responsible for any delay in connection beyond such a date if such delay is due to circumstances outside of The Company's reasonable control and is not attributable to The Company's fault or negligence.

#### **4. RIGHT TO CHANGE USERNAME, INTERNET ADDRESS AND PASSWORD**

The Company shall have the right from time to time, with The Customer's prior consent (which consent shall not be unreasonably withheld), to change the Customers User Name, internal Address and or Password allocated by the Company for the purpose of essential network maintenance, enhancement, modernisation or other work deemed necessary to the operation of the Internet.

#### **5. PAYMENTS**

- 5.1 The Customer shall pay charges for the Service to the Company in advance annually, quarterly or monthly as the parties may agree in the Accepted Order, unless any other payment method has been agreed in writing between the Company and the Customer or as detailed on any Accepted Order
- 5.2 Any Upgrade Usage Charges detailed in any of the Company's published tariffs and that of its appointed distributor currently in operation shall be paid by the Customer to the Company in advance, covering the period to the next payment date for the original data rate supply rate and thereafter simultaneously with the original data rate supply payment.
- 5.3 If, upon the parties' mutual written agreement, this Agreement is upgraded to provide a higher level of service, then the service will continue at the mutually agreed upon higher rate for the remainder of the applicable contract period.
- 5.4 Co-location bandwidth is monitored on a monthly basis. If usage exceeds agreed commitment then an additional invoice will be presented to the Customer for the difference between usage and commitment. The uncommitted bandwidth will be

## Standard Term and Conditions

charged at a rate of £20 per Gb per month or such other rate as may from time to time be mutually agreed upon by the parties in writing.

- 5.5 Itemised details of excess usage and any other relevant charges may be made available to the Customer if ordered in advance.
- 5.6 All payments not in good faith dispute shall be due to the Company thirty (30) days from the Customer's receipt of invoice unless otherwise specified on the invoice at the Company's main office or at such other address as may from time to time be mutually agreed upon by the parties in writing. Invoices will be presented to the Customer at least 30 days before their due date. All usage charges not in good faith dispute shall be payable in full in respect of the month in which the notice to terminate the Agreement expires.
- 5.7 Interest payable on demand whether before or after judgement shall accrue from day to day on overdue amounts not in good faith dispute at the rate of 2% above base rate together with VAT if applicable.

## **6. USAGE**

The Customer hereby agrees to:

- 6.1 Accept and abide by the Nitrex LTD Acceptable Use Policy as published as of the effective date of this Agreement, a copy of which shall be attached hereto as Schedule 11 hereto.
- 6.2 refrain from transferring any illegal material (including but not limited to material which may be deemed to be offensive, abusive, indecent, defamatory, obscene, menacing or in breach of copyright, privacy or other rights) to or from other users of the service or the PDN and the other privately owned and operated services to which the Company may from time to time provide access;
- 6.3 refrain from using The Company's service for deceptive or fraudulent practices, or any activity infringing on the intellectual property rights of others, including, but not limited to, copyrights, trademarks, service marks, trade secrets, patents.
- 6.4 refrain from using The Company's service to take actions that restrict or inhibit any Person, whether a customer of Nitrex or otherwise, in its use or enjoyment of any Nitrex service or network.
- 6.5 refrain from using The Company's service for the deliberate transmission of computer viruses worms, trojan software, or other malicious programs.
- 6.6 refrain from using The Company's service for interfering with, disrupting, or denying service including, but is not limited to, using any technique to intentionally degrade or disable the delivery of any legitimate data (e.g., denial of service attacks).
- 6.7 refrain from using The Company's service for maintaining an Open Email Relay/Open Data Relay or allowing any data to be sent through one's system by an unrelated third party, including, but is not limited to, via open email gateways and open proxy servers, poorly configured equipment.

## Standard Term and Conditions

- 6.8 refrain from using The Company's service to post excessive numbers of identical or similar messages to any number of Usenet newsgroups from the Company's network or networks of other Internet Service Providers
- 6.9 refrain from using The Company's service to post the same or similar messages to large numbers of Usenet newsgroup ("Newsgroup Spam").
- 6.10 refrain from sending menacing, offensive, abusive or annoying messages (commonly referred to as, but not exclusively, 'spam'), whilst using the Service via the Company or any other ISP; 'Spam' includes, but is not limited to
  - 6.10.1 the bulk sending of unsolicited messages, or the sending of unsolicited e-mails which provoke complaints from recipients
  - 6.10.2 the sending of junk mail,
  - 6.10.3 the use of distribution lists that include people who have not given specific permission to be included in such distribution process,
  - 6.10.4 posting commercial ads to USENET newsgroups that do not permit it,
  - 6.10.5 posting articles containing binary encoded data to non-binary newsgroups,
  - 6.10.6 excessive and repeated posting off-topic messages to newsgroups,
  - 6.10.7 excessive and repeated cross-posting,
  - 6.10.8 e-mail harassment of another Internet user or users, including but not limited to, transmitting any threatening, libellous or obscene material, or material of any nature which could be deemed to be offensive, and
  - 6.10.9 the e-mailing of age inappropriate communications or content to anyone under the age of 18.
- 6.11 not divulge their Password to any third party and use all reasonable endeavours to keep the same confidential and inaccessible to third parties;
- 6.12 notify The Company at any point the Customer has reason to believe that The Customer's Network and/or Access and/or password may be compromised.
- 6.13 keep the Company informed of any change to the Customer's address as set out overleaf and other such information as may effect the payment of charges due;
- 6.14 immediately cease to use and return any Internet Addresses allocated by the Company to the Customer on termination of this Agreement;
- 6.15 not to announce by any means any and all Internet Addresses allocated to or by the Customer as part of an autonomous system;
- 6.16 not to use or permit the usage of the Service in an unlawful manner or in contradiction of published legislation and regulations governing the Internet; and



## Standard Term and Conditions

6.17 include the above restrictions in all the Customer's on selling conditions using the Company's Service and not to resell a bandwidth greater than that purchased and contracted from the Company unless linked to the Internet through another provider in addition to the bandwidth provided by the Company (dual homed) when the restriction will apply at the aggregated data rate.

### **7. EQUIPMENT**

7.1 Collocated Equipment shall:

7.1.1 at all times be at the Customers risk, except due to the fault or negligence of the Company;

7.1.2 shall be insured by the Customer, at Customer's sole discretion, against all risks.

7.2 Leased Equipment from the Company shall:

7.2.1 at all times remain the property of the Company;

7.2.2 shall be covered by and the Customer agrees to maintain at Customer's expense during the entire time this Agreement is in effect, comprehensive general liability insurance.

7.3 Customer Equipment which is supplied by the Company pursuant to a purchase order shall:

7.3.1 remain the property of the Company until full payment for the Customer Equipment in cleared funds has been received by the Company, at which time title to the relevant Customer Equipment shall pass to the Customer; and

7.3.2 be warranted as follows: That, from the date of the Company's delivery of any such Customer Equipment to the Customer, and continuing for the longer of (i) ninety (90) days, or (ii) the period set forth in the manufacturer's warranty card accompanying the Customer Equipment, such Customer Equipment will conform to its published specifications. The Company will deliver to the Customer any published specifications relating to any such Customer Equipment within ten (10) days following the Company's written request thereof. All other warranties, representations and conditions are excluded to the fullest extent permitted by law, save that any manufacturers' or suppliers' warranties that are capable of assignment shall be immediately assigned by the Company to the Customer.

7.4 All Customer Equipment which is located on the Premises shall be subject to a general and particular lien for the payment of fees or charges payable by the Customer to the Company under this Agreement, and the Company may sell any Customer Equipment and apply the proceeds of sale in or towards satisfaction of every lien and all proper charges and expenses related to each lien, accounting to the Customer for any surplus, if the lien is not satisfied with ninety (90) days from the date when the Company first gave notice of its exercise of any lien.

## Standard Term and Conditions

- 7.5 Where Collocated Equipment or Customer Equipment is located on land owned or leased by the Customer or its agents, the Customer shall grant or shall procure the grant to the Company, its employees, agents or contractors of a licence to enter the land to execute any works for and in connection with the maintenance, adjustment, repair, alteration or if requested by Customer, removal of the Collocation Equipment or Customer Equipment, subject to the Customer's or its agent's reasonable terms and conditions governing security and access procedures to enter the land.

### **8. TELECOMMUNICATION TARIFFS**

The Customer warrants to the Company on the date of this Agreement, on an ongoing basis throughout this Agreement, that it has independently verified the Retail Rates, POLOs, Transit Charges and any other applicable charges by reference to BT's retail and carrier price list from time to time.

### **9. LIABILITY**

- 9.1 Neither the Company nor the Customer shall be liable for the following to the extent permitted by the applicable law:

9.1.1 indirect damages, loss of profits, business revenue, goodwill or any economic loss;

9.1.2 any loss or damage to the other party caused by or arising from any act or omission of the other party, any PTO or Value Added Service supplier; or other client or persons (other than those providing services to Customer through the Company); or

9.1.3 any act caused as a result of force majeure or beyond the party's reasonable control not arising from any of its fault or negligence.

- 9.2 The Company's total liability for any loss or damage suffered by the Customer shall not exceed the greater of £2,500 or the aggregate of all charges payable or paid by the Customer for the Service supplied in the 12 month period beginning on the Service Commencement Date or its anniversary in which the event giving rise to the claim occurs.

- 9.3 Neither party excludes or limits its liability to the other for (i) death, personal injury or tangible property resulting from the acts or omissions to act of either party, its employees or agents; (ii) any claim, loss, damage or expense arising from its gross negligence or wilful misconduct; or (iii) the breach of its confidentiality obligations hereunder.

### **10. CHANGES TO THE SERVICE**

If any Network Operator shall discontinue the provision of telecommunications services to the Company or shall alter by modification, expansion, improvement, maintenance or repair the telecommunications services or any part thereof provided to the Company or shall disconnect the Customer's apparatus from the PSTN, PDN or Internet, the Company shall, upon thirty (30) days prior written notice to the Customer, be entitled to discontinue, alter, modify, expand, improve, maintain,

## Standard Term and Conditions

repair, suspend, disconnect or otherwise change the Services as necessary and in any such event, the Customer reserves the right to immediately terminate this Agreement and/or any Services hereunder without any liability to the Company.

### **11. SUSPENSION**

The Service may be suspended or suspended during peak times by the Company upon written notice and without prejudice to the Company's rights of termination under clause 12 in the event of the following:

- 11.1 Failure by the Customer to make any payment to be made to the Company hereunder within thirty (30) days from its due date for payment, provided that such payments are not in good faith dispute.
- 11.2 If the Customer does or suffers anything to be done which materially jeopardises the Service or any network to which the Customer is from time to time connected.
- 11.3 If the Customer's credit limit has been exceeded or if the Customer is otherwise in material breach of these Conditions.
- 11.4 No such suspension shall affect the liability of the Customer to pay charges and other amounts to the Company for Services already performed up to the date of suspension. During suspension the Company reserves the right to refuse to release the Customer's Internet Address as issued by the Company.

### **12. TERMINATION**

This Agreement shall remain in force for a minimum period of 12 months from the date of an Accepted Order. Termination can be effected as follows:

#### 12.1 By the Customer

12.1.1 The Customer may terminate this Agreement for its convenience by giving thirty (30) days written notice to the Company. Email notification will not be accepted as notice of termination of Agreement.

12.1.2 The Customer may terminate this Agreement at any time upon written notice to the Company if the Company commits any material breach of this Agreement, which breach is not cured within ten (10) business days from the date of the Company's receipt of a notice from the Customer of such breach.

#### 12.2 By the Company

The Company may terminate this Agreement at any time upon prior written notice to the Customer if:

12.2.1 the Customer commits any material breach of this Agreement including, but without limitation, non-payment of any subscription charges not in good faith dispute, which breach is not cured within ten (10) business days from the date of the Customer's receipt of a notice from the Company of such breach; or

12.2.2 by at least 3 months written notice to the Customer.

## Standard Term and Conditions

- 12.3 The Company reserves the right to invalidate any Customer's User Name and Internet Address issued to the Customer following termination of this Agreement.
- 12.4 Domain name hosting and transfer request for DNS records must be in writing with the authorised signature of the domain owner. There is no charge for the transfer, but a small charge may be made for administration. Domain Name transfers will not be made until all outstanding amounts not in good faith dispute have been paid by the Customer, and until such time Domain Names shall remain the property of the Company.
- 12.5 No refund of subscription charges will be made to the Customer upon termination of the Agreement by the Company for the Customer's material breach not cured within the applicable cure period. In the event of any other termination, the Company shall immediately refund to the Customer the subscription and all other charges prepaid by the Company allocable to the remainder of the terminated term.
- 12.6 The Customer shall at his own cost return to the Company all equipment cables and literature belonging to the Company within 5 days of final completion of the Agreement and ensure that it arrives in good working order, normal wear and tear excepted.

### **13. RIGHTS ON TERMINATION**

- 13.1 Termination of the Agreement shall not affect any pre-existing liability of the Customer or the Company or affect any right of the Company or the Customer to recover damages or pursue any other remedy in respect of any breach by the Customer of the Agreement.
- 13.2 On termination of the Agreement the right to the use of the Internet Address allocated by the Company shall revert to the Company under RIPE terms or agreement except where a specific agreement has been reached in writing between the RIPE and the Customer for the transfer of the Internet Address and the fee or other payment required by the Company in connection with such transfer has been paid for by the Customer.
- 13.3 In the event of termination of the Agreement by the Company on account of any material breach of these Conditions by the Customer not cured within the applicable cure period, the Company shall be entitled to the balance of all annual subscription payments and call charges which would, but for such termination, have accrued up to the earliest date on which the Agreement could have been terminated by the Customer in accordance with these Conditions.

### **14. USER NAME AND INTERNET ADDRESS**

The Company shall not be requested or required to release the User Name Domain Name or Internet Address and may refuse to do so until this Agreement has been lawfully brought to an end and all sums due hereunder have been received by the Company, and the Customer has complied with all its obligations hereunder. Domain Names remain the property of the Company until all sums due have been received.

## Standard Term and Conditions

### **15. NOTICES**

- 15.1 Any notices under or in connection with this Agreement shall be in writing and shall be delivered by Royal Mail post to the relevant address given in the Agreement or to such address as the recipient may have notified to the other party via e-mail for that purpose.
- 15.2 Suspension notices for non-payment of charges will be deemed as delivered by facsimile to the relevant facsimile number given in the application or to such facsimile number as the Customer may have notified.
- 15.3 Any notice shall be duly given, if given by recorded or registered mail. In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such communication was properly addressed and posted.

### **16. EXPENSES OF THE COMPANY AND THE CUSTOMER**

The Customer and the Company shall each pay to the other party all costs and expenses (so that any reasonable legal fees shall be based on an indemnity basis) incurred by the other party in enforcing any of these Conditions, or exercising any of its other rights and remedies under the Agreement, including (without prejudice to the generality) all costs incurred in tracing the Customer or the Company, as the case may be, in the event that legal processes cannot be enforced at the address last notified to the enforcing party.

### **17. NON-WAIVER**

The allowance of time to pay or any other indulgence by the Company in respect of payments due to it shall in no manner affect or prejudice its right to payment together with interest provided under these Conditions. The failure or delay of the Customer to enforce any part of these Conditions shall not affect or waive the Customer's rights to enforce it at a later date.

### **18. INVALIDITY**

If these Conditions or the Agreement or any part thereof shall be adjudged for any reason to be void, unenforceable or ineffective but would be adjudged to be valid effective and enforceable if part of the wording were deleted or a provision were reduced in scope these Conditions of the Agreement shall continue with such modifications as may be necessary to make its provisions (or if such be the case its remaining provisions) valid effective and enforceable.

### **19. CONFIDENTIALITY**

Each party (the "receiving party") hereto undertakes to the other that it shall keep, and shall procure that its directors and employees shall keep secret and confidential and shall not use or disclose to any other person any information or material of a technical or business nature relating in any manner to the business, products or services of the other party (the "receiving party") which the receiving party may receive or obtain in connection with or incidental to performance of the Agreement ("Confidential Information"), provided that:

## Standard Term and Conditions

- 19.1 the receiving party shall not be prevented from using any general knowledge, experience and skills not treated by the disclosing party as confidential and which the receiving party may have independently developed at any time during the Agreement without reliance or use of the disclosing party's Confidential Information;
- 19.2 the receiving party shall not be prevented from using the information or material referred to above to the extent such information or material comes into the public domain otherwise than through the default or negligence of the receiving party; and
- 19.3 notwithstanding the above, receiving party shall have the right to communicate any information concerning the disclosing party to any Government department or body or other authority established by statute or under subordinate legislation, where such information is required by law or is otherwise properly required under a PTO licence, Office of Telecommunications regulation, or Code of Practice or otherwise, but only to the extent of and for the purposes of such law, regulation, or order and only if the receiving party (if permitted by law) first notifies the disclosing party so that the disclosing party may seek an appropriate protective order.

Confidential Information includes information received from third parties that the disclosing party is obligated to treat as confidential. Each party agrees not to disclose the other party's Confidential Information to any person other than its employees, agents or independent contractors who have a need to know the same in connection with performance or use of the Services hereunder, and who are under obligations and confidentiality substantially similar to this Section 19. Each party agrees that at all times during the term of this Agreement and for five (5) years thereafter it shall protect the confidentiality of the Confidential Information of the other in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind. All Confidential Information made available hereunder, including copies thereof, shall be returned to the disclosing party or destroyed, and certified as having been so returned or destroyed, upon the first to occur of (a) completion of the Services or (b) request by the disclosing party.

## **20. ASSIGNMENT**

Neither party shall assign or transfer any of its rights or obligations under an Agreement save that the Company may assign to an associated company within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, on written notice.

## **21. OTHER PRINTED OR STANDARD CONDITIONS**

- 21.1 All Services are provided on the foregoing conditions which, together with any special terms set out on an Accepted Order, constitute the entire agreement to the exclusion of any other terms and conditions and no agreement terms and conditions contained in any document sent by either party to the other party shall be of any effect with respect to the Agreement unless expressly accepted by a duly authorised officer of the other party in writing.
- 21.2 The Customer acknowledges that the Customer has not relied on and shall not be entitled to rescind the Agreement or to claim damages or any other remedy on the basis of any representation, warranty, undertaking or statement which is not set out in these Conditions, the Agreement or an Accepted Order, including any

## Standard Term and Conditions

representation made by or on behalf of the Company in relation to the Service which has induced the Customer to enter into the Agreement with the Company.

### **22. VARIATION**

These Conditions may not otherwise be varied or waived except by express written agreement between both parties.

### **23. SERVICE LEVEL GUARANTEE**

23.1 The Company warrants that its supply of access to the Internet shall be available at a level of 99.7% per year (the "**Service Level Guarantee**"). This warranty excludes:

23.1.1 failures of local circuits between the Company's network and the Customer's network;

23.1.2 failures of network / equipment not operated by the Company.

23.2 The Company will to the best of its ability attempt to maintain adequate security procedures to protect its network(s) and those of The Customer. The Customer agrees that due to the nature of electronic communication, in any form or format, that no service should ever be considered 100% secure and safe. The Company does not warrant in any way shape or form that any service it shall provide shall be 100% safe and secure.

23.3 In the event of suspension of Service due to (i) a technical fault in the network not caused or attributable in any way to the Company or (ii) act of God, the Company will use all possible endeavours to resume service with minimum delay but will not be responsible for loss suffered by the Customer. The Company may suspend the Service from time to time for necessary technical reasons and network upgrades without invalidating its Service Level Guarantee set out above provided that 12 hours' notice via the Company's network status page or email has been given to the Customer and the period of suspension is not more than one hour. The Company shall use its reasonable endeavours to time such suspensions between 0000 hours and 0600 hours local time. Should the level of service not conform to the Service Level Guarantee, the Company will provide a credit.

### **24. LAW AND ARBITRATION**

24.1 These Conditions and all Agreements are subject to the laws of England and Wales.

24.2 These Conditions incorporate the provisions for arbitration if any are available under any Code of Practice issued by the Network Operator under the provision of its licence. Any dispute which may arise between the parties concerning this Agreement shall be determined either in accordance with such arbitration procedure, if any, or by the High Court of Justice in England and the parties hereby submit to the exclusive jurisdiction of that court for such purpose.