

Terms and conditions for Accentika Internet Ltd

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

"Accepted Order" means an Order 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 made subject to these Conditions that shall incorporate these Conditions

"Collocated Equipment" means any equipment sited at the Company's or other third party's premises as required to provide the Service

"Company" means Accentika Internet Ltd (company registered number 5396765) of Suite 204, The Darwin Rooms, 1 Worcester Road, Malvern, WR14 4QY.

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

"Company Proprietary Source Code" means any source code designed by the Company.

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

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

"Domain Name" means any name and appropriate classification and or geographic locator registered with an appropriate domain registry and converted to an Internet Address by means of a Domain Name Server.

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

"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

"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

"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

"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

"RIPE" means the Riseaux IP Europeans - RIPE administer and provide technical coordination necessary to enable the operation of a pan-European IP Network. RIPE 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 in the current Company literature together with such Value Added Services to be provided by the Company to the Customer 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

"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

"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

"Value Added Service" means the provision of a service other than simple connectivity that may be detailed in the current Company brochure or website.

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 unincorporate; 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 the Accepted Order;

1.3.2 the Agreement

1.3.3 these Conditions; and

1.3.4 that other agreement or document.

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

2 ACCEPTANCE OF ORDERS

2.1 The Company reserves the right to refuse any order for subscription, services or goods.

3 THE SERVICE

3.1 Subject to these Conditions the Company will, as required and subject to the Customer Order:

3.1.1 register the Customer's Domain Name; and

3.1.2 provide the web site hosting service.

3.1.3 Domain Name registration is subject to the availability of the requested Domain Name, and the Customer accepts that registration can take from 1 to 5 working days from the date of payment and receipt of full details.

3.1.4 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 renewal fee has been received by the registrar within the existing registration period.

3.1.5 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.

3.1.6 The Customer must inform the Company of any change to their telephone, fax, email or other contact addresses within 5 working days of the change becoming effective.

4 RIGHT TO CHANGE USERNAME, INTERNET ADDRESS AND PASSWORD

4.1 The Company shall have the right from time to time 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. Any such changes to be notified by email or fax.

5 OFFICE HOURS

5.1 The Company's normal office hours are 9am to 5pm Monday to Friday.

6 PAYMENTS

6.1 Charges for the Service shall be paid by the Customer to the Company in advance unless any other payment method has been agreed in writing between the Company and the Customer or as detailed on any Accepted Order.

6.2 The Company reserves the right to vary from time to time all charges with one month's notice to the Customer.

6.3 Any Upgrade Usage Charges detailed in any of the Company's published 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.

6.4 If this agreement is upgraded to provide a higher level of service, then the service will continue at the higher rate for the remainder of the contract period.

6.5 Bandwidth is monitored on a monthly basis and unused amounts cannot be carried forward. Usage is set at a maximum of 1GB per month or the amount stated in the Agreement whichever is the greater. If usage is exceeded then an additional invoice will be presented to the Customer for the difference between usage and commitment. The uncommitted bandwidth will be charged at a rate of £20 per GB per month or such other rate as may from time to time be amended and advertised by the Company on its web site

6.6 Itemised details of excess usage and any other relevant charges may be made available to the Customer if ordered in advance and the Company reserves the right to make an additional charge for this service.

6.7 All payments shall be due to the Company net on presentation 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 specified by the Company in writing. All usage charges shall be payable in full in respect of the month in which the notice to terminate the Agreement expires.

6.8 Interest payable on demand whether before or after judgement shall accrue from day to day on overdue amounts at the rate of 2% above base rate together with VAT if applicable.

6.9 Payments received will be credited against outstanding invoices in date chronological order.

6.10 The Company reserves the right to add interest and compensation to all late payments pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.

7 USAGE

7.1 The Customer hereby agrees to:

7.1.1 Accept and abide by the Accentika Internet Acceptable Use Policy as published on the Accentika Internet web site at: www.accentika.co.uk and as may from time to time be changed.

7.1.2 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;

7.1.3 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;

7.1.4 not divulge their Password to any third party and use all reasonable endeavours to keep the same confidential and inaccessible to third parties;

7.1.5 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;

7.1.6 immediately cease to use and return any Internet Addresses allocated by the Company to the Customer on termination of this Agreement;

7.1.7 not to announce by any means any and all Internet Addresses allocated to or by the Customer as part of an autonomous system;

7.1.8 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.

7.2 The Company reserves the right to restrict or block internet traffic to or from a Customer site in the event of a failure to abide by the published terms of the Acceptable Use Policy. This may include, but not exclusively, the transmission of unsolicited email.

7.3 The Company reserves the right to make an administrative charge as a result of abuse of the Acceptable Use Policy

8 EQUIPMENT

8.1 Customer Equipment shall:

8.1.1 at all times be at the Customers risk;

8.1.2 shall be insured by the Customer against all risks; and

8.1.3 shall be subject to the terms and conditions of the landlord or owner of the building in which the equipment is located.

8.2 Leased Equipment from the Company shall:

8.2.1 at all times remain the property of the Company;

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

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

8.3.1 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

8.3.2 be supplied without any warranty, representation or condition, whether express or implied by common law or statute and all such 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 assigned by the Company to the Customer.

8.4 All Customer Equipment which is not located on land owned or leased by the Customer or its agents shall be subject to a general and particular lien for the payment of fees or charges payable by the Customer to the Company under any 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 14 days from the date when the Company first gave notice of its exercise of any lien.

8.5 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 removal of the Collocated 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 if such terms and conditions provide for emergency access to the Collocated Equipment or Customer Equipment outside of normal business hours.

9 COMPANY PROPRIETARY SOURCE CODE

9.11 Company Proprietary Source Code remains the Intellectual Property of the Company.

9.2 On payment of all outstanding amounts by the Customer, the Company grants the Customer licence to operate the Company Proprietary Source Code and database design on a single web site in perpetuity.

9.3 On payment of all outstanding amounts by the Customer, the Company grants the Customer the right to move and re-brand the web site.

9.4 The Customer has no right to edit Company Proprietary Source without prior agreement. Any change by the Customer or any agents to the Company Proprietary Source Code or database design will be in breach of copyright and subsequent maintenance contracts or guarantees will be deemed void.

9.4 Duplication, in part or in whole, of Company Proprietary Source Code for use on secondary sites is not permitted without a separate agreement between the Company and the Customer.

10 DESIGN AND CONTENT

10.1 On payment of all outstanding amounts by the Customer, the copyright in the design and content will pass to the Customer.

11 LIABILITY

11.1 The Company shall not be liable for the following to the extent permitted by the applicable law:

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

11.1.2 any claim made against the Customer by another third party that does not follow a breach of these Conditions by the Company;

11.1.3 any loss or damage to the Customer caused by or arising from any act or omission of the Customer, any PTO or Value Added Service supplier; or other client or persons; or

11.1.4 any act caused as a result of force majeure or beyond the Company's control.

11.2 The Company's total liability for any loss or damage suffered by the Customer shall not exceed the greater of £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.

11.3 Neither party excludes or limits its liability to the other for death or personal injury resulting from the proven negligence of either party, its employees or agents.

12 CHANGES TO THE SERVICE

12.1 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 be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise change the Services as necessary.

13 SUSPENSION

13.1 The Service may be suspended or suspended during peak times by the Company without notice and without prejudice to the Company's rights of termination under clause 13 in the event of the following:

13.2 Failure by the Customer to make any payment to be made to the Company on its due date for payment.

13.3 If the Customer does or suffers anything to be done which jeopardises the Service or any network to which the Customer is from time to time connected.

13.4 If the Customer's credit limit has been exceeded or if the Customer is otherwise in breach of these Conditions.

13.5 No such suspension shall affect the liability of the Customer to pay charges and other amounts to the Company, and without limitation, the monthly subscription charge will continue to accrue. During suspension the Company reserves the right to refuse to release the Customer's Internet Address as issued by the Company.

14 TERMINATION

14.1 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:

14.2 By the Customer

14.2.1 The Customer may terminate this Agreement by giving 3 month's; written notice, which may expire at any time after 12 months from the Service Commencement Date. Email notification will not be accepted as notice of termination of Agreement.

14.3 By the Company

14.3.1 The Company may terminate this Agreement at any time and without notice if:

14.3.1.1 the Customer commits any breach of this Agreement including, but without limitation, non-payment of any subscription charges; or

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

14.4 The Company reserves the right to invalidate any Customer's User Name and Internet Address issued to the Customer following termination of this Agreement.

14.5 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 charge may be made for administration.

14.6 Domain Name transfers will not be made until all outstanding amounts have been paid by the Customer.

14.7 Domain Names shall remain the property of the Company until all outstanding amounts have been paid by the Customer except in such situations where the Domain Name has been previously registered and paid for in full by the Customer or third party.

14.8 No refund of subscription charges will be made to the Customer upon termination of the Agreement by either the Company or the Customer.

14.9 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.

15 RIGHTS ON TERMINATION

15.1 Termination of the Agreement shall not affect any pre-existing liability of the Customer or affect any right of the Company to recover damages or pursue any other remedy in respect of any breach by the Customer of the Agreement.

15.2 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.

15.3 In the event of termination of the Agreement by the Company on account of any breach of these Conditions by the Customer, 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.

16 USER NAME AND INTERNET ADDRESS

16.1 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, when registered by the Company at the request of the Customer, remain the property of the Company until all sums due have been received.

17 NOTICES

17.1 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.

17.2 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.

17.3 Any notice shall be duly given, if given by pre-paid first class mail, at the expiration of 48 hours after the envelope containing the same shall have been posted. 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 as a pre-paid first class letter.

18 SAFEGUARD OF DATA

18.1 The Company has no obligation to archive project files or data and it remains the Customer's responsibility to commission a suitable level of data protection.

18.2 Requests for project files must be in writing.

19 EXPENSES OF THE COMPANY

19.1 The Customer shall pay to the Company all costs and expenses (so that any legal fees shall be based on an indemnity basis) incurred by the Company 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 in the event that legal processes cannot be enforced at the address last notified to the Company.

20 NON-WAIVER

20.1 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.

21 INVALIDITY

21.1 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.

22 CONFIDENTIALITY

22.1 Each 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 which the first party may receive or obtain in

connection with or incidental to performance of the Agreement, provided that:

22.2 the first party shall not be prevented from using any general knowledge, experience and skills not treated by the other party as confidential or which do not properly belong to the other party and which the first party may have acquired or developed at any time during the Agreement;

22.3 the first 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 second party; and

22.4 notwithstanding the above, either party shall have the right to communicate any information concerning the other 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.

23 ASSIGNMENT

23.1 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 notice.

24 OTHER PRINTED OR STANDARD CONDITIONS

24.1 All Services are provided on the foregoing conditions which, together with any special terms set out on an Order or in the Agreement, 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 the Customer to the Company shall be of any effect with respect to the Agreement unless expressly accepted by a duly authorised officer of the Company in writing.

24.2 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 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.

25 VARIATION

25.1 The Company reserves the right to vary these Conditions as a result of changes required by its insurers, new legislation, statutory instruments, Government regulations or licences. These Conditions may not otherwise be varied or waived except by express written agreement between both parties.

26 LAW AND ARBITRATION

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

26.1.1 If any difference shall arise between the Company and the Customer upon the meaning of any part of this contract or the rights and liabilities of the parties hereto, the same shall be referred to the arbitration of two persons (one named by each party) or their umpire in accordance with the provisions of the Arbitration Act 1950 or any amending or substituted legislation for the time being in force.

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