



# Managed Solution Terms

## Overview

Cedita (referring to either Cedita Ltd or Cedita Digital Ltd as necessary) provide managed server support to the company's partners and customers on an ongoing basis.

Whilst we do not provide hardware, we have relationships in place with 2 hosting companies that allow us to provide the service under the following terms. One of the hosting providers (UKFast) provides high SLAs for mission-critical deployments, and thus we pass on their terms as our terms of service.

Be aware that at all times your contract is with Cedita, and *not* our back-end hosting provider.

## Cedita Hosted Solution Terms of Service

### 1. Agreement

This Hosted Solution Agreement incorporates the following documents by reference: (i) the Services Description that describes the Services you are buying and related fees; (ii) these Terms containing the general terms and conditions applicable to all Services; (iii) the Service Level Agreement; and (iv) where applicable the Dedicated Server Terms or applicable UKFast Terms. When we use the term "Hosted Solution Agreement" or "Agreement" in any of these documents, we are referring collectively to all of them. The Agreement is effective as of the date of the email sent to you by Cedita expressly confirming acceptance of your order or the date you accept the Agreement as part of Cedita's online order process.

### 2. Definitions

"Business Day" or "Business Hours" means 9:00 am – 5:00 pm. Monday through Friday, excluding public holidays in the United Kingdom.

"Cedita" refers to either Cedita Ltd or Cedita Digital Ltd as necessary based on the company of which provided the Order Form of which terms the customer is now bound to.

"Hosting Services" means: (i) Cedita's provision for your use of the Hosted System, and (ii) Support.

"Order Form" refers to the initial order form / quote provided to customer with appropriate signatures from both parties.

"Services" means Hosting Services and Supplementary Services, collectively.

"Services Description" means a written description (usually an Order Form) of the Hosted System and/or Supplementary Services you are buying from Cedita, and related fees, that is incorporated by reference in the Agreement.

"Supplementary Services" means those Services you purchase from Cedita other than the Hosting Services, including time and materials based professional or consulting services (such as database administration or "DBA" services), one-time or non-recurring services which are not part of the existing Support (such as for the application that you operate on your Hosted System), and any other services identified as "Supplementary Services" on the applicable Services Description.

"Support" has the meaning stated in the applicable Services Description.

### 3. Our Obligations

Cedita's obligation to begin providing Services is contingent on your satisfaction of Cedita's credit approval criteria. Cedita will provide the Hosting Services in accordance with the Services Description, and other specifications in this Agreement. Cedita will perform any Supplementary Services in a good and professional manner. Cedita will maintain security practices that are at least as stringent as the minimum security practices expected of a professional IT provider, and will provide the specific security services as described in your Services Description. Cedita will perform all Services in accordance with applicable law.

### 4. Your Obligations

You must use reasonable security precautions in connection with your use of the Services. You must comply with the laws applicable to your use of the Services and with the Acceptable Use Policy. You must cooperate with Cedita's reasonable investigation of Service outages, security problems, and any suspected breach of the Agreement. You are responsible for keeping your account permissions, billing, and other account information up to date using your Cedita Customer Portal or via another Cedita defined process. You must pay when due the fees for the Services stated in the

Services Description or other agreement between us. If there is a dispute with respect to any portion of an invoice, you shall pay the undisputed portion of the fees promptly and provide written details specifying the basis of any dispute. Each of us agrees to work together to promptly resolve any disputes.

## **5. Promises We Do Not Make**

5.1. We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Confidential Information and property.

5.2. We disclaim any and all warranties not expressly stated in the Agreement to the maximum extent permitted by law, including the implied warranties relating to satisfactory quality and fitness for a particular purpose. You are solely responsible for the suitability of the services chosen. Any services that we are not contractually obligated to provide but that we may perform for you at your request and without any additional charge are provided on an 'AS IS' basis.

5.3. We do not have knowledge of the data you store within your Hosted System, including the quantity, value or use of the data. You are therefore responsible to take all reasonable steps to mitigate the risks inherent in the provision of the Services, including loss of your data, including any PII or "cardholder data" as that term is defined in the Payment Card Industry-Data Security Standard. The Services that Cedita has agreed to provide to assist you to mitigate such loss (if required) are set out in the Services Description, which may include backup services and geographically redundant servers. Cedita does not promise to back up your data unless you have purchased backup services. If you purchase backup services Cedita does not promise to retain any data backup(s) for longer than the agreed data retention period as set out in the Services Description. In all events, you release Cedita from liability for loss of data to the extent that the data has changed since the time that we were last required by the Agreement to perform a backup.

5.4. We will provide Support only to your administrative or technical contacts listed on your account. We will not provide support directly to your end users unless specifically agreed in writing.

## **6. Unauthorised Access to your Data or Use of the Services**

Cedita is not responsible to you or any third party for unauthorised access to your data or the unauthorised use of the Services unless the unauthorised access or use results from Cedita's failure to meet its security obligations stated in Section 3 (Our Obligations) of these General Terms and Conditions or the Services Description. You are responsible for the use of the Services by any employee of yours, any person you authorise to use the Services, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorised by you.

## **7. Terms and Fees**

Your applicable Services Description set out your term and renewal information as well as fee and pricing information.

## **8. Suspension of Services**

8.1. We may suspend Services without liability if:

- 8.1.1. We reasonably believe that the Services are being used in breach of the Agreement;
- 8.1.2. You don't cooperate with our reasonable investigation of any suspected violation of the Agreement;
- 8.1.3. There is an attack on your Hosted System or your Hosted System is accessed or manipulated by a third party without your consent;
- 8.1.4. We are required by law or a regulatory or government body to suspend your Services; or
- 8.1.5. There is another event for which we reasonably believe that the suspension of Services is necessary to protect the Cedita network or our other customers.

8.2. We will give you advance notice of a suspension under this clause of at least twelve (12) Business Hours unless we determine in our reasonable commercial judgement that a suspension on shorter or contemporaneous notice is necessary to protect Cedita or its other customers from imminent and significant operational, legal, or security risk. If your Hosted System is compromised, then you must address the vulnerability prior to Cedita placing the Hosted System back in service, or, at your request, we may be able to perform this work for you at our standard hourly rates as a Supplementary Service.

## **9. Termination for Breach**

9.1. You may terminate the Agreement for breach if we:

- 9.1.1. Materially fail to provide the Services as agreed and do not remedy that failure within ten (10) days of your written notice describing the failure; or
- 9.1.2. Materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

9.2. We may terminate for breach if:

- 9.2.1. We discover that the information you provided for the purpose of establishing the Services is materially inaccurate or incomplete;
- 9.2.2. The individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person or company represented to be the customer;
- 9.2.3. Your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of our written notice;

- 9.2.4. You have made payment arrangements via credit card or other third party, and the third party refuses to honour our charges;
- 9.2.5. You fail to comply with any other obligation stated in the Agreement and do not remedy the failure within thirty (30) days of our written notice to you describing the failure; or
- 9.2.5. Your agreement for any other Cedita service is terminated for breach for any reason applicable to that service.

9.3. Either of us may terminate the Agreement with immediate effect on written notice if the other (or we reasonably believe that the other): (i) is unable to pay its debts; or (ii) enters into compulsory or voluntary liquidation; or (iii) compounds with or contravenes a meeting of its creditors; or (iv) has a receiver or manager or an administrator appointed (or an application is made to the court for the same); or (v) ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts (“Insolvency Event”).

9.4. Notwithstanding anything to the contrary within the Agreement, the fees for the Services shall become due immediately upon the occurrence of an Insolvency Event.

## **10. Confidential Information**

10.1. Each of us agrees not to use the others’ Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, as may be required by law, or as set forth below.

Each of us agrees not to disclose the others’ Confidential Information to any third person except as follows:

- 10.1.1. To each of our respective service providers, employees, Affiliates, suppliers, agents and representatives, provided that such service providers, employees, Affiliates, suppliers, agents or representatives agree to confidentiality measures that are as least as stringent as those stated in these Terms;
- 10.1.2. To a law enforcement or government agency if either of us reasonably believes that the others’ conduct may violate applicable criminal law;
- 10.1.3. As Required by law; or
- 10.1.4. In response to a court order or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this clause (or prompt notice in advance of disclosure, if seven (7) days advance notice is not reasonably feasible), unless the law forbids such notice.

## **11. Limitation on Damages**

11.1 Subject to clause 11.2, but without prejudice to Cedita’s right to the fees for the Services, including any early termination fee (if applicable) and your right to service credits under the applicable Service Level Guarantee and/or termination for any reason:

11.1.1. Each party’s liability to the other for direct loss or damages whether in tort (including, without limitation, negligence), contract or otherwise, is limited to and shall not exceed:

11.1.1.1. for Hosting Services, an amount that is six (6) times the monthly recurring fee under this Agreement as of the time of the occurrence of the event(s) giving rise to the claim and; and

11.1.1.2 for Supplementary Services, the greater of five hundred British Pounds Sterling (£500) or the fees paid for the Supplementary Services that are the subject of the claim;

11.1.2. Neither party will be liable to the other in any way for any special, incidental, economic, or indirect loss or damages, or for loss of data, loss of profits, revenues, customers or contracts, wasted management time, increased costs or expenses, whatsoever and howsoever arising including in connection with the performance, non-performance or delayed performance of the Services or otherwise under this Agreement even if that party has been advised by the other or should have reasonably been aware of the possibility of such loss.

11.2. Nothing in this Agreement limits or excludes either party’s liability for any loss or damages resulting from:

11.2.1. death or personal injury caused by its negligence; and

11.2.2. any fraud or fraudulent misrepresentation.

11.3. The service credits stated in the Service Level Agreement are your exclusive remedy for Cedita’s failure to meet those agreements for which service credits apply.

11.4. Cedita agrees to have valid insurance cover in place for its own legal liability to you under this Agreement up to the limits set out in this clause. As the fees for the Services properly reflect the delineation of risk between the parties, each party agrees to ensure that it will be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability as necessary.

## **12. Indemnification**

12.1. If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the “Indemnitees”) is faced with a legal claim by a third party arising out of your actual or alleged negligence, breach of law, failure to meet the security obligations required by the Agreement, breach of the AUP, breach of your agreement with your customers or end users, then you will pay the cost of defending the claim (including reasonable legal fees) and any damages award, fine or other amount that is imposed on the Indemnitees as a result of the claim. Your obligations under this clause include claims arising out of the acts or omissions of your employees or agents, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorised by you. You must also pay reasonable legal fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with Cedita, or any claim by your customer or end user arising from an actual or alleged breach of your obligations to them.

12.2. We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defence of the claim. We may not settle the claim

without your consent, although such consent may not be unreasonably withheld, delayed or conditioned. You must pay reasonable legal fees and expenses due under this clause as we incur them.

### **13. Publicity**

You agree that we may publicly disclose that we are providing Services to you and may use your name and logo to identify you as our customer in promotional materials, including press releases. We will not use your name or logo in a manner that suggests endorsement or affiliation.

### **14. Recommendations**

Cedita personnel may from time to time recommend third party software or other products and services for your consideration. CEDITA MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING SUCH PRODUCTS AND SERVICES. Your use of any products and services not provided by Cedita is governed by the terms of your agreement with the provider of those products and services, and is at your sole risk. Cedita is not responsible in any way for the third party product's performance, features nor failures.

### **15. Who may use the services**

You may permit your subsidiaries and affiliated companies to use the Services if you wish, however you are responsible for the acts or omissions of your permitted users. Cedita will provide support only to you, not to your customers, subsidiaries or affiliates. There are no third party beneficiaries to the Agreement, meaning that your customers, subsidiaries, affiliates, and other third parties do not have any rights against either of us under the Agreement.

### **16. Managed Services Management Agent**

You agree that you will not interfere with any services management software agent(s) that Cedita installs on your Hosted System. Cedita agrees that its agents will use only a minimal amount of computing resources, and will not interfere with your use of your Hosted System. Cedita will use the agents to track the hardware and software that Cedita provides, so that it can more efficiently manage various service issues, such as patching exceptions and product life cycles. Cedita will use the agents to track the hardware and software that Cedita provides, so that it can more efficiently manage various service issues, such as patching exceptions and product life cycles. Cedita may also use the software to identify security vulnerabilities. Cedita will not use the agents to view or capture your content or data. Your Services will become "unsupported" if you disable or interfere with our service management software agents. You agree that Cedita may access your Hosted System to reinstall services management software agents if you disable or interfere with their performance.

### **17. Ownership of Intellectual Property**

Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights and other intellectual property. Any intellectual property developed by Cedita during the performance of the Services shall belong to Cedita unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

### **18. Ownership of Other Property**

You do not acquire any ownership interest in or right to possess the Hosted System, and you have no right of physical access to the Hosted System. We do not acquire any ownership interest in or right to the information you transmit to or from or store on your Cedita servers or other devices or media.

### **19. Intellectual Property Infringement**

If Cedita or any of its customers is faced with a credible claim that the Services infringe the intellectual property rights of a third party, and Cedita is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then Cedita may terminate the Services on reasonable notice of at least ninety (90) days, and will not have any liability on account of such termination except to refund amounts paid for Services not used as of the time of termination.

### **20. Assignment / Subcontractors**

Neither party may assign the Agreement without the prior written consent of the other party except that Cedita may assign the Agreement to an Affiliate with sufficient financial standing in order to meet its obligations under this Agreement or as part of a bona fide corporate reorganisation or a sale of its business. We may transfer your Confidential Information as part of any such transaction. Cedita may use third party service providers to perform all or any part of the Services, but Cedita remains responsible to you under this Agreement for Services performed by its third party service providers to the same extent as if Cedita performed the Services itself.

### **21. Force Majeure**

Neither of us will be in breach of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organised labour action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

### **22. Governing Law / Lawsuits**

The Agreement is governed by the English law and each of us expressly and unconditionally submits to the exclusive jurisdiction of the courts of England and Wales except that Cedita may seek to enforce any judgment anywhere in the world where you may have assets. Each of us agrees that it will not bring a claim under the Agreement more than two (2) years after the event giving rise to the claim occurred.

### 23. General

**23.1. Changes to Terms on Website.** These General Terms and Conditions and the applicable Product Terms are incorporated in your Agreement by reference to pages on the Cedita website. Although we may from time to time revise the General Terms and Conditions, and Product Terms posted on these pages, those revisions will not vary the Agreement until the first day of any renewal or extended term that follows the date that we publish the revision. However if over time you sign multiple Agreements for a single Hosted System, for example to add service elements to an existing Hosted System, then the version of the General Terms and Conditions and Product Terms and Conditions referenced in the last signed Agreement will govern the entire Hosted System, unless otherwise agreed in writing.

**23.2. Modifications.** Unless otherwise expressly permitted in this Agreement, the General Terms and Conditions, Product Terms, and Country Specific Terms may be amended only by a formal written agreement signed by both parties. A Services Description may be amended to modify, add, or remove services by a formal written agreement signed by both parties, or by an exchange of correspondence, including via electronic mail or the Cedita ticketing system, that includes the express consent of an authorised individual for each of us. The pre-printed terms on your purchase order or other business forms will not become part of this Agreement.

**23.3.** The Agreement constitutes the complete and exclusive agreement between the parties regarding the subject matter and supersedes and replaces any prior understanding or communication, written or oral. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of Cedita which is not set out in the Agreement.

**23.4. Order of Precedence.** If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: signature page for the Hosting Services Agreement, Services Description, Product Terms, any addendum to the General Terms and Conditions, the General Terms and Conditions, and the Acceptable Use Policy.

**23.5. Unenforceable Provisions.** If any part of the Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Agreement.

**23.6. No Waiver.** Each party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past.

**23.7. No Partnership.** The relationship between the parties is that of independent contractors and not business partners. Neither party is the agent for the other, and neither party has the right to bind the other to any agreement with a third party.

**22.8. Interpretation.** The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word “including” in the Agreement shall be read to mean “including without limitation.” The words “our” and “us” refer to Cedita unless the context clearly indicates another meaning.

**23.9. Survival.** The following terms shall survive expiration or termination of the Agreement: Sections 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22 and 23 of these General Terms and Conditions, all terms of the Agreement requiring you to pay any fees for Services provided prior to the time of expiration or termination or requiring you to pay an early termination fee, and all other provisions of the Agreement that by their nature are intended to survive expiration or termination of the Agreement.

**23.10. Changes Not Made Known.** If you have made any change to the Agreement that you did not bring to Cedita’s attention in a way that is reasonably calculated to put Cedita on notice of the change, the change shall not form part of the Agreement.

**23.11. Counterparts.** The Agreement may be signed in multiple counterparts, which taken together will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

## Cedita Standard Service Level Agreement

**Uptime Guarantee** Our dedicated server network, regardless of hosting provider, consists of multiple redundant internet connections and components. This means we are confident to guarantee 99.9% network availability (approx. 45 minutes downtime per month). This excludes any scheduled maintenance. In the event of unplanned network failure, we will refund 24 hours’ service for every 60 minutes of lost connection – up to a maximum value of 50% of your monthly subscription charge. Any credits offered under the SLA will be allocated against your Cedita account.

**Hardware Guarantee** In the unlikely event of an unfixable server hardware failure, we guarantee that hardware will be replaced within two hours of the problem’s diagnosis. Hardware is defined as the processor(s), RAM, hard disk(s), motherboard, NIC card and other related hardware included with the server. This guarantee excludes the time required to rebuild a RAID array and the reload of certain operating systems, processors and applications. It does not include any bespoke server hosting solutions.

**Ticket Response** With our standard SLA, should there be a problem with your server; rest assured that a qualified engineer will be working on the problem within 4 hours of being notified. You will be kept updated with ticket updates until the problem is resolved. An engineer report with full details of any issue and resolution will be sent to you within 24 hours of completion.

**Pass-Thru Support** With our standard SLA, should there be a hardware fault with your server under a managed service (UKFast); we guarantee that your issue will be communicated directly to an engineer in the datacentre within 2 hours of being notified.

Our SLA does not cover the following circumstances: Any events beyond the reasonable control of Cedita (examples include, but are not limited to, fire, flood, virus attacks / hacking, or failure of third party software); DNS issues outside of our control; Any customers actions that lead to the server having technical issues (examples include, but are not limited to, custom scripts or coding, 3<sup>rd</sup> party software installed on the server, wilful misconduct or breach of our terms and conditions); and upgrades, scheduled maintenance or emergency maintenance.

## Cedita Dedicated Server Terms

**This only applies to customers that DO NOT have servers provided by UKFast. This will be made clear on any quote provided.**

### 1 DEFINITIONS

These Specific Terms and Conditions are to be read in conjunction with our General Terms and Conditions of Supply. Where applicable, all definitions contained within these Specific Terms and Conditions have the same meaning as those set out in the General Terms and Conditions of Supply. In addition, the following definitions are used in these Specific Terms and Conditions:

"Base Configuration" means the configuration of the Operating System, Core Software, the Server and the firewall security settings as determined by Cedita.

"Company" or "we" means Cedita Ltd, having the registered number 08588677 also where the context permits its assigns and any sub-contractor for the Company.

"Core Software" means the software applications included as standard as part of the Dedicated Servers as specified in the Customer Order Form.

"CPU" means the Central Processing Unit or Processor within the Server that interprets commands and executes programmes and instructions.

"Customer" or "You" means the person, firm or company to whom the Servers are provided by the Company pursuant as stated on the Customer Order Form.

"Customer Order Form" means the order form for the supply by Cedita of the Equipment and/or Dedicated Hosting Services, completed by the Customer.

"Customer and End User Configuration Parameters" means the parameters within which Customers and End Users of the Dedicated Servers can configure and administer their Servers via SSH (Secure Shell) and Root Access.

"Dedicated Servers" or "Servers" or "Service" means the dedicated servers provided by Cedita as described in the Service Schedule and Customer Application.

"Demarcation Point" means the point at which the customer dedicated server is physically attached to Cedita's network and a point on Cedita's Edge network corresponding to a customer connection to the Internet. The network infrastructure between any two demarcations points is controlled and managed by Cedita and is subject to our SLA.

"Dynamic Content" means Web site content that has been generated by a database on the Server and which is updated automatically when the database is updated.

"End User" means an individual authorised by the Customer to access the Dedicated Servers.

"Emergency Maintenance" means reactive compulsory maintenance carried out by the Company which the Company anticipates may have an effect on the Service provided to the Customer, with limited notification to the Customer.

"Equipment" means the physical hardware components of the Server.

"Executable Files" means files that run as computer programs on the Server, or else invoke computer programs by means of a script.

"Hardware" or "Hardware Components" means the physical hardware components of the Server used to run the Service comprising Intel-based server chassis, System Board and Power Supply Units (PSUs) to the Server, System Memory, RAID Controller, RAID Disks, CPU, Network Interface Card, Dell Remote Access Card (DRAC) and System Fans.

"Maintenance Window" means a period of time out of normal business hours for the Company to undertake Scheduled Maintenance and/or Emergency Maintenance.

"Managed Firewall" is considered to be any physical multi-tenanted firewall provided by the Company to the Customer as part of the Service.

"Minimum Cancellation Notice Period" means the minimum period of notice that a Customer must provide to terminate a specific Service or this Agreement as set out in Clause 10.

"Network Interface Card" means a communications component that allows the Server to communicate with other electronic devices using an Ethernet network.

"Normal Business Hours" means between 09:00 hrs and 17:00 hrs on any day except a Saturday, Sunday or public or bank holiday in England and Wales.

"Normal Working Day" means the normal working day period operated by the Company which is Monday to Friday inclusive, but excluding any public or bank holiday in England and Wales.

"Operating System" means that set of computer programs installed on the Server by the Company controlling the components of the Server and facilitating the operation of the Core Software and other software applications installed by the Customer.

"Power Supply Units" or "PSUs" mean the units contained within the Server that supply power to the rest of the Hardware Components allowing the Server to operate.

"Premises" means one of Cedita's secure data centre suites or a data center of their nomination or such alternative Premises as may be determined in accordance with these Specific Terms and Conditions.

"RAID Controller" means a device in the Server that manages the storage components to be configured into logical arrays for the purpose of resiliency and performance gains.

"RAID Disks" means redundant array of independent disks on the Server.

"Reasonable Endeavours" means an obligation to take all reasonable steps which the Company considers reasonably necessary taking into account all relevant circumstances in order to achieve the required objective.

"Remote Access Card" or "Dell Remote Access Card (DRAC)" means the interface card provided by Dell and installed on the Server, providing remote monitoring and management of the hardware.

"Root Access" means a special user account on the Server that provides system administration permissions.

"Scheduled Maintenance" means outline, preventative maintenance which must be carried out by the Company which the Company anticipates may have an effect on the Service provided to the Customer.

"Scripts" means a file consisting of a structured sequence of commands which run on the Server and invoke other computer programs.

"Server" means the physical Server including all Hardware and software components that are provided and hosted by the Company at the Premises and leased to the Customer for the provision of the Dedicated Servers.

"Server re-install" or "Re-install" means reinstalling the Server with the Operating System and Core Software as per the original setup of the Servers, therefore clearing all data and other software applications installed by the Customer from the Server.

"Service Level Agreement" or "SLA" means the service level agreement relating to the Dedicated Servers that describes the service levels to be met by Cedita together with the remedies available to the Customer for failure to meet such service levels.

"Service Period" means the period of an individual Service provided in accordance with this Agreement as set out in Clause 4.

"Service Schedule" means the Schedule to these Specific Terms and Conditions that sets out a description of the Service.

"SSH" or "Secure Shell" means the network protocol that will allow Customers to connect to their Server securely over the Internet.

"System Board" means the mother board, which is the central part of the Server that contains the CPU, expansion slots and the system's random access memory (RAM).

"System Fans" mean the motor-driven fans installed in the Server that circulate air in order to cool the Hardware Components within the Server.

"System Memory" means the random access memory (RAM) of the Server.

"System Settings" means those settings of the Dedicated Servers that can be configured by the Customer and End Users.

## **2 THE SERVICES**

2.1 These Specific Terms and Conditions apply to Dedicated Servers.

## **3 MANAGEMENT AND SUPPORT**

3.1 The Company will ensure that the Customer can contact (by telephone or e-mail) an Engineer during Normal Business Hours for major faults affecting Hardware; that is, faults which materially prejudice and interrupt the operation of the Dedicated Servers. For general troubleshooting help, telephone and e-mail based assistance will be available during Normal Business Hours. All such enquiries are subject to the SLA. The management and support provided by the Company will extend to:

- a) Supplying and managing all Hardware Components.
- b) Supplying all Core Software to be installed on the Server as specified within the Service Schedule.
- c) Ensuring that the Base Configuration is setup and available for the Customer.
- d) Ensuring the network connectivity appropriate to that specified by the Service Schedule is available at all times.
- e) Restarting the Server at the reasonable request of the Customer.
- f) Re-installing the Server at the reasonable request of the Customer to the original or an alternative Operating System. Operating Systems are provided by the Company at the level of a current stable release from the Operating System vendor, to include major updates or version changes at the time of installation.

3.2 Management and Support does not include:

- a) Maintenance, support or guarantee of any Core Software or software application installed on the Server, including but not limited to downloading, testing and installing any application, software update or security patch.
- b) Any matters outside the scope of the Service including without limitation, responsibility for the Customer and End User Configuration Parameters and System Settings, Web site Dynamic Content, Scripts, Executable Files, the addition of SQL accounts and the setup of new Web sites.

3.3 The Company will take no responsibility for any Customer data stored on the Server. In the event of a Server Restore being requested by the Customer or a fault or failure affecting the Hardware or Network, the Company will not be held responsible for any loss or corruption of data resulting from such an occurrence.

#### **4 SERVICE PERIOD**

4.1 Unless otherwise terminated or suspended in accordance with this Agreement, the Dedicated Servers shall be provided for a Minimum Service Period of 12 months from the date of activation.

4.2 On expiry of the periods referred to in Clause 4.1 above, the Service will, unless terminated on or before the date of such expiry, automatically renew until terminated pursuant to this Agreement or until a new contract term is agreed between the Company and the Customer.

#### **5 PROVISION OF SERVICE**

5.1 The provisioning period (that is the period from receipt and acceptance by the Company of a completed Customer Order Form to commencement of the Service) for the Dedicated Servers is targeted, but is not guaranteed, within five working days. In circumstances where this provisioning period takes longer than five working days, the Company will use Reasonable Endeavours to inform the Customer on a regular basis about progress and the expected date of completion, but will not be liable or responsible to the Customer for any delay beyond the five working day target.

#### **6 SERVICE LEVEL/CREDITS**

6.1 The Company shall provide the Dedicated Servers in accordance with these Specific Terms and Conditions and subject to the applicable Service Level Agreement (as specified on the Customer Order Form).

#### **7 CONDITIONS OF USE**

7.1 You agree to:

- a) provide an authorised technical contact, authorised contact number and password, to keep any records of such details and any other confidential information provided by us in a safe place and to take all necessary steps to ensure the security of such records;
- b) without prejudice to the General Terms and Conditions, keep such information private and confidential and ensure, at all times, that it (or they) does (do) not become known to any unauthorised personnel.

7.2 You agree that you will notify us immediately if you become aware of any change in circumstances which may lead you to believe that such information has become known to any unauthorised personnel.

7.3 You agree that we may, from time to time, suspend and/or change your password (at our discretion if we feel that such a step is in the interests of security).



7.4 You agree to only operate Operating System software supplied by Cedita for the purposes of operating a Dedicated Server.

7.5 You are responsible for any misuse of the Dedicated Servers, including misuse by your agents or employees or any unauthorized persons. Accordingly, you must implement such security and other procedures and to take steps to ensure that others do not gain access to your account.

7.6 You agree not to break or attempt to break security on any of our network or affiliated networks, or to access an account that does not belong to you. You may not use scripts or programs that interfere with or deny services to other users on any other server, host, network or channel.

7.7 You are entirely responsible for the content of your Dedicated Server. In addition to the restrictions on the use of the Service contained in the General Terms and Conditions of Supply, the Dedicated Servers must not be used:

a) fraudulently or in connection with any criminal offence including, but not limited to, theft, fraud, piracy, drug-trafficking, money laundering and terrorism or unlawful activity;

b) to facilitate or incite terrorism, hatred, violence, sadism, cruelty, racial hatred, prostitution or paedophilia;

c) to send, knowingly receive, upload, download, or use any material that violates current UK law; that is to say materials deemed to be offensive, abusive, indecent, defamatory, obscene, menacing or pornographic, or in breach of copyright, confidence, privacy or any other rights;

d) to provide any links, banners or any information regarding how to obtain access to any material which the Dedicated Servers may not be used for under the General Terms and Conditions of Supply and/or these Specific Terms and Conditions.

7.8 If we become aware that your bandwidth usage is such that you are likely to exceed your specified allocation (in the Service Schedule or Customer Order Form), we will use our reasonable endeavours to notify you of such. If you do exceed your specified bandwidth allocation you will be charged for such excess usage in line with our standard charges as specified in the Service Schedule or Customer Order Form.

7.9 Any fault with the Services, and/or the Equipment, which you detect must be reported to us as soon as possible either:

a) by telephone to Cedita's technical support team on 0161 7265 256 during Normal Business Hours;

b) by e-mail to [support@cedita.com](mailto:support@cedita.com);

c) to such other telephone number as we may notify to you from time to time for this purpose;

d) Cedita's Customer Portal located at <https://www.cedita.com/Portal/>

## **8 OUR RIGHTS**

8.1 We may, from time to time, upon not less than one months' written notice to you, elect to provide the Dedicated Servers from Premises other than that previously agreed provided that such Premises afford the same level of service that we provide you. Any cost and expense incurred by us in moving the Service shall be borne by us. Where the Service is moved to another location in accordance with this clause, all references in these Specific Terms and Conditions to Cedita's Suite and/or the Premises in which it is situated shall be amended accordingly.

8.2 Where we provide firewall protection in conjunction with the Dedicated Servers, we will not be held responsible for any unauthorised access to your Service, data or content unless caused by our gross negligence.

8.3 Where we are in breach of the Agreement and such breach can be remedied by either re-performance or compliant performance of our obligations within a reasonable time, such re-performance and/or compliant performance shall be your sole remedy in respect of such breach, subject to the SLA.

## **9 CHARGES**

9.1 Except as otherwise provided in the Agreement, all Charges and other sums due from you in respect of the Services and/or Equipment shall be set out in the Customer Order Form and/or the invoice relating to such Services and/or Equipment.

9.2 You shall pay the charges (without any set off or deduction of any kind) on either a monthly, quarterly or annual basis as stated in the Customer Order Form and/or the invoice referred to in Clause 9.1 above.

9.3 All amounts payable by you in accordance with the Agreement shall be exclusive of Value Added Tax ("VAT"), or any other applicable tax or duty, which shall be payable in addition to all such amounts due from you.

9.4 Where the Customer has a credit account, we will send you a VAT invoice following completion of the provision of the Services. Where you have no credit facility, we will send you a VAT receipt following receipt by us of your payment.

9.5 You agree that you will notify us as soon as possible of any change in your credit/debit card or bank account details. Should you terminate the Services in accordance with this Agreement, it is your responsibility to terminate any standing order with your bank.

## 10 TERMINATION

10.1 Once the Dedicated Hosting Service has been activated and is available for you to use, you may only end this Agreement by notice equal to the Minimum Cancellation Notice Period which must expire on or after the Minimum Service Period as described in Clause 10.2.

10.2 Unless otherwise stated, the Minimum Cancellation Notice Period is 30 days (to expire on or after the Minimum Service Period).

10.3 We reserve the right to terminate your Agreement. Upon termination, we will delete all files and content from the Server/Hardware (including but not limited to Web pages, images and database files).

## 11 NOTICES

11.1 You agree to keep the contact details which you have provided to us up to date. Any notice or other information to be served by us on you in accordance with this Agreement will be validly sent if in writing and sent by either e-mail or first class post to your last known e-mail or postal address. Any notice sent by first class post will be deemed served two days after posting. Any notice sent by e-mail will be deemed served on the day that it is sent.

11.2 Any notice to be served on us must be in writing and sent either by pre-paid first class post to our registered office or by e-mail to support@cedita.com or to such other address as may be specified by us to you for this purpose from time to time. Any notice sent in accordance with this sub-clause will only be deemed served if and when you have received a written acknowledgement from us.

## UKFast Acceptable Use Policy

**This only applies to customers that have servers provided by UKFast. This will be made clear on any quote provided.**

### Corporate Profile

It is a requirement of the UKFast Terms and Conditions that all users of its network or services accept and adhere to UKFast's Acceptable Use Policy (AUP) for Internet Access. UKFast may change this policy to include changes in the law or in the acceptable practice of internet use and reserves the right to make such changes without notice and whenever required. All our users are responsible for ensuring that they have read and understand the current policy.

Compliance with this AUP is a contractual requirement. If you fail to observe the terms of this policy your account or service may be liable to termination or suspension. In the event that an account is suspended, UKFast may be prepared, at its sole discretion, to restore the account on receipt of a written statement that the user will not commit any further abuse of the service. Any charges to re-instate service will be passed on.

UKFast's relationship with its clients, its partners and other network providers depends on responsible conduct from all users. UKFAST will not hesitate to protect itself and other clients and networks should any form of abuse be found to be occurring.

### Use of Networks and the Internet in General:

- Email
- Web usage
- Abuse of UKFast services

### Use of networks and the Internet in General:

You must not use the service for the transmission of illegal material. The user agrees to refrain from sending or receiving any materials which may be deemed to be offensive, abusive, indecent, hard-core or paedophile pornography, defamatory, obscene, menacing or otherwise as prohibited by current and future statutes in force. The user agrees to refrain from sending or receiving any material which may be in breach of copyright (including Intellectual Property Rights), confidence, privacy or other rights. If you are in any doubt as to the legality of what you are doing, or propose to do, you should either take independent legal advice or cease that usage.

You should be aware that the storage, distribution of or transmission of illegal materials may lead to investigation and possible prosecution by the relevant authorities.

You must not gain or attempt to gain unauthorised access to any computer systems for any purpose. In addition to being a breach of this AUP, such action may lead to criminal prosecution under the Computer Misuse Act.

You must not send data to the internet using forged addresses or data which is deliberately designed to adversely affect remote machines (including but not limited to denial of service (DDoS), worms and viruses, trojans and ping storms).

You must ensure that local PCs and network connected servers are not configured to allow open relay and must not participate in the sending of unsolicited bulk email (commonly referred to as 'spam', 'UBE', 'UCE').

You are prohibited from running 'port scanning' or other software intended to probe, scan, test the vulnerability of or access remote systems or networks except in circumstances where the remote user has given express permission for this to be done. UKFast may ask for evidence of such permission.

You may not divulge your network passwords to third parties and should take all reasonable steps to ensure that such information remains confidential.

## **Email**

Sending and receiving email involves the same responsibilities and approach as would be used when sending or receiving any other form of communication - written or printed mail, fax, telephone call etc. Most users fully understand what would be considered appropriate and acceptable when communicating with others and apply these considerations to their use of email. There are occasions when some users send mail or engage in online communication that others consider unacceptable - generally regarded as abuse by the online community.

If you find it difficult to determine what might be considered 'abuse' with online communication you should realise that, in general terms, anything that might be unacceptable, and possibly illegal, in other forms of communication will be equally unacceptable and possibly illegal online.

You should not send emails that might cause annoyance, inconvenience or anxiety to a recipient.

You should not send any emails likely to cause distress or any material which is offensive, indecent, obscene, menacing or in any way unlawful.

You must not use UKFast mail services or network to send email to any user who does not wish to receive it.

You must not use UKFast mail services or network to send unsolicited email, in bulk (commonly known as 'spam') or individually.

You must not use UKFast mail services or network with intent to deprive others of service ('mail bomb').

You must not use false mail headers or alter the headers of mail messages in such a way as to conceal the identity of the sender.

You must not use any email address that you are not authorised to use.

You must ensure that any email servers connected to the UKFast network and operated by you are not configured to allow 'open relay'. Customers who abuse the UKFast email service will be notified that their behaviour is unacceptable and may have their accounts suspended, terminated or blocked.

UKFast reserves the right to restrict or block internet traffic to or from a Customer server, without prior notification, 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 or the presence of an open mail relay.

If a customer account or service is suspended or blocked due to abuse, then service may be restored at UKFast's sole discretion and generally will only be restored on receipt of a written assurance of future compliance with this Policy and on payment of an administrative charge for restoration of service.

## **Web Usage**

Web usage includes the use of web space provided with client accounts, web hosting on UKFast servers and the use of web services and space on customer colocated servers.

UKFast cannot and does not proactively monitor content on any web space maintained by customers (whether customer space, web hosted or colocated services) and cannot and does not guarantee that such sites are free of illegal content or other materials that may be considered unacceptable.

You undertake sole responsibility for the content of web pages owned and or operated by you - whether on client pages, web hosted space or colocated servers - within the UKFast domain or other domains hosted within the UKFast network.

You undertake sole responsibility to ensure that all materials on any web site owned or operated by you contains material that you have created or have permission to use.

You undertake sole responsibility for any dispute involving Copyright or Intellectual Property Rights associated with your site or service.

You must not use your website or web service to promote or distribute any material or content that is illegal (under any current or future legislation). You should be aware that the internet is a global communications network and what may be legal in the UK may be illegal elsewhere and leave you liable to prosecution in another country. UKFast may undertake investigation of content services if potential abuse is brought to its attention and reserves the right to remove any web page on our servers at any time and for any reason.

## **Abuse of UKFast Services - Action by UKFast**

Please address all complaints about abuse of UKFast services to [abuse@ukfast.co.uk](mailto:abuse@ukfast.co.uk).

UKFast reserves the right to investigate suspected or potential abuse of its Acceptable Use Policy. If we become aware of possible abuse, either through our own investigations or through referral by another user or by a third party, we may begin an investigation that may include gathering information from all potential parties and materials on our servers. UKFast reserves the right to suspend accounts or access during such investigations and/or to remove materials from servers (on a temporary or permanent basis). All actions will be determined on an individual basis and will not be taken to form any precedent.

UKFast customers who engage in abuse of the network and/or the internet will be notified that their behaviour is unacceptable and may have their accounts suspended or terminated if such abuse continues. If a customer account or service is suspended or blocked due to abuse, then service may be restored at UKFast's sole discretion and generally will only be restored on receipt of a written assurance of future compliance with this Policy and on payment of an administrative charge for restoration of service.

All UKFast users acknowledge that UKFast may be required by current or future legislation to access, store, copy or otherwise Customer data stored within or transmitted by our service. By accepting this Acceptable Use Policy you expressly agree that we may access and use your personal data or other account information in connection with any such investigation and may disclose such data to any third party who has a legitimate interest in the data, investigation or outcome.

UKFast reserves the right to terminate service, with immediate effect and without further obligation or liability to Customers, as required by any law enforcement authority or by the Courts of the United Kingdom.

### **Regulation of Investigatory Powers**

UKFast undertakes to take action required under the provisions of the Regulation of Investigatory Powers Act and will fully cooperate with the appropriate UK authorities.

## UKFast Terms

**This only applies to customers that have servers provided by UKFast. This will be made clear on any quote provided.**

### 1. DEFINITIONS

The following words shall have the following meanings:

1.1 "Agreement" means the physical Order Form (and/or a request for services via an equivalent online method approved by the Company), the Conditions, the AUP and the SLA;

1.2 "Assumptions" means the assumptions referred to in Clause 3.4 (and as may be changed in accordance with Clause 3.5);

1.3 "AUP" means the Acceptable Use Policy of the Company and a copy of which may be found on the Company's website;

1.4 "Change Recommendation" means the change(s) which may be recommended by the Company at any time in writing in accordance with the mechanism set out in Clause 3.5;

1.5 "Change Request" means the change(s) which may be requested by the Customer at any time in writing in accordance with the mechanism set out in Clause 3.5;

1.6 "Change Response" means the written response provided by the Company to the Customer in accordance with Clause 3.5 following an investigation into the effect(s) of the proposed change(s);

1.7 "Chargeable Day" means one person working on a calendar day for up to seven and a half hours (7.5 hours);

1.8 "Colocation" means the accommodation of equipment owned by the Customer at a data centre operated by the Company and for these purposes "Colocated Equipment" means the equipment so accommodated and "Colocated Space" means the place where the Colocated Equipment is accommodated;

1.9 "Company" means UKFast.Net Limited (Company Registration Number 03845616) whose registered office is situated at City Tower, Piccadilly Plaza, Manchester M1 4BT;

1.10 "Company's Network" means the network owned and operated by the Company for the purpose of connecting the Customer to the Internet;

1.11 "Conditions" means these terms and conditions;

1.12 "Customer" means any person or organisation with whom the Company enters into the Agreement and as detailed on the Order Form;

1.13 "Internet" means the global data network comprising interconnected networks to which the Company is connected and provides access to its Customers;

1.14 "Internet Protocol Address" means such sequence of alphanumeric or numeric only characters as assigned by the Company to the Customer in relation to the Specification;

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

1.16 "Order Form" means the Company's standard Order Form signed by the Customer relating to the Services to be provided by the Company to the Customer;

1.17 "Parties" means the Customer and the Company;

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

1.19 "Services" 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 excluding all or any representations made by the Company's distributor which will not form part of the Agreement unless confirmed in writing by the Company prior to the purchase of the Services;

1.20 "Service Commencement Date" means the date identified as the target delivery date on the Order Form;

1.21 "SLA" means the Service Level Agreement of the Company and a copy of which can be found on the Company's website;

1.22 "Specification" means a detailed written specification of the Services to be provided to the Customer under the Agreement;

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

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

1.25 "User" means any person, organisation or other entity that employs the Services provided by the Company and is in most cases the Customer;

1.26 "User name" means a sequence of alphanumeric characters as are used by the Customer to identify itself; and

1.27 "Value Added Services" means the provision of a service (or services) other than the Services which are agreed in writing between the Customer and the Company.

## 2. ACCEPTANCE OF AGREEMENT

2.1 The Company reserves the right to refuse to enter into any Agreement for the Services but if accepted by the Company the Services shall not be unreasonably withheld without proper justification.

2.2 The Customer acknowledges that the Conditions prevail over any of the Customer's own standard terms and conditions whether set out on the Customer's own standard order form or otherwise.

2.3 In the event of any conflict between the Conditions and the Agreement for the Services then the Conditions shall prevail.

## 3. SERVICES

3.1 The Company shall provide the Services to the Customer having regard to the provisions of the SLA.

3.2 The Parties shall produce and agree the Specification.

3.3 The Parties each agree to dedicate the necessary resources and use all reasonable commercial efforts to meet their respective deadlines set forth in the Specification. Any delay or adjustment in the Specification caused by the Customer's delay shall be the responsibility of the Customer and the Customer will pay the Company for all costs incurred for wasted time and/or for the rescheduling of booked resources at the Company's standard daily rates plus expenses.

3.4 In relation to performance dates, the number of Chargeable Days estimated to be required to complete the Services as detailed in the Order Form shall be reviewed following finalisation of the Specification and is based upon the following assumptions (known as "the Assumptions"):

(a) the scope of the tasks performed by the Company will not exceed those stated in the Specification;

(b) the Customer will perform and complete the Customer's assigned tasks required by the Specification in a timely manner;

(c) the Customer will not suspend or delay the project in any manner without prior authorisation by the Company which shall not be unreasonably withheld;

(d) the Services are performed during normal working hours those being Monday to Friday 9.00 am to 5.00 pm except as otherwise agreed in writing between the Parties; and

(e) the Specification cannot be amended once it has been agreed.

3.5 Without prejudice to Clause 24, changes can only be effected in accordance with the following change control mechanism:

(a) either the Company may recommend, or the Customer may request, at any time in writing changes to any of the Assumptions, to any part of the Specification or other provisions of the Agreement;

(b) the Company will notify the Customer in writing within 10 working days of either the Company making a change recommendation (known as "a Change Recommendation") or receiving a written request for changes from the Customer (known as "a Change Request") of the time needed to investigate the implication(s) of the proposed change(s) together with the costs (if any) to be charged by the Company to the Customer for undertaking such an investigation;

(c) assuming the investigation proceeds (since it is for the Customer to give the Company a written instruction to investigate the implication(s) of the proposed change(s) by first having agreed to pay any costs to be charged by the Company to the Customer for undertaking it) the Company will give a written response (known as "a Change Response") showing the effect(s) of the proposed change(s) including:

(i) a revised estimate of the number of Chargeable Days estimated to complete the Services;

(ii) a revised project timeline;

(iii) any additional expenses that will be incurred;

(iv) any effect(s) on other contractual provisions of the Agreement should the proposed change(s) be implemented and in so doing the Company shall use all reasonable endeavors to ensure that the Change Response is given within 10 working days (or such longer period as may be reasonably agreed between the Parties) of receipt by the Company of a written instruction to investigate the implication(s) of the proposed change(s);

(d) should the Customer wish to proceed with the proposed change(s), it will instruct the Company in writing of its wish as soon as reasonably practicable after receipt of the Change Response but in any event not later than 10 working days of receipt of the Change Response (or such longer period as may be reasonably agreed between the Parties) and in such a case those parts of the Agreement affected by the proposed change(s) once implemented will then be deemed to be varied in accordance with the details set out in the Change Response which will then form part of the Agreement; and

(e) until any change is agreed in writing and implemented the Parties shall continue to perform their respective obligations under the Agreement as if the change had not been proposed.

3.6 All key personnel and subcontractors provided by the Company to perform the Services pursuant to the Agreement shall have the appropriate technical and application skills to enable them to adequately perform their duties. All of the Services shall be performed in a competent and workmanlike manner. The Company will use all reasonable efforts to ensure continuity in staffing of its key personnel.

3.7 The Customer agrees to procure the agreement and understanding of the Customer's own customers where the Services are to be sold to third parties and procure in writing the agreement of such customers that they agree to terms and conditions no less onerous than those contained in the Conditions.

3.8 The Customer agrees not to oversell the Services (or any part thereof) under the Agreement to any third party.

3.9 Total data sent and received within the Company's network is calculated monthly per customer and measured in Gigabytes rounded up to the next 1 Gigabyte.

3.10 The Company does not warrant that the Company's technology or the Services will be compatible with any equipment, software or other technology not furnished by the Company.

#### 4. THIRD PARTY SOFTWARE AND HARDWARE

4.1 All third party software and hardware shall be sold subject to the Customer's acceptance of the relevant suppliers' software licence(s) for such third party software. The Company aims, wherever possible, to pass onto the Customer the benefit of any and all representations and warranties it receives from the respective third party software suppliers but is under no obligation to do so given that such matters lie outside the Company's control.

4.2 The pricing set forth in the Order Form for third party software is estimated to the extent that the actual cost may differ based upon such variables including (but not limited to) the Customer's specific requirements, changes to functionality and changes in pricing by the third party software vendors on the date on which the software is ordered all of which said matters lie outside the control of the Company.

4.3 To the extent that third party software is supplied by the Company, the Customer may procure support services in accordance with the details set out in the Order Form but the Company's offer to provide these support services is contingent upon the Company's ability to obtain such support from the appropriate third party software supplier as a result of which the Company cannot and does not warrant that such third party software is or will be supported by the Company because such matters lie outside the control of the Company.

#### 5. RIGHT TO CHANGE USERNAME, INTERNET PROTOCOL ADDRESS AND PASSWORD

The Company shall have the right at any time to change the Username, Internet Protocol Address and/or Password allocated by the Company to the Customer for the purpose of essential network maintenance, enhancement modernisation or other work deemed necessary for the effective operation of the Company's Network.

#### 6. PAYMENTS

6.1 All charges for the Services, as detailed in the Order Form, shall be paid by the Customer to the Company annually in advance unless otherwise agreed in writing between the Parties in the manner prescribed on the Order Form.

6.2 The Company reserves the right to vary all charges to the Customer with one month's notice but any such variation shall only take effect on the contract renewal date or the anniversary of the contract commencement date (whichever is the earlier).

6.3 Itemised details of excess usage of bandwidth and any other relevant charges may only be made available to the Customer if ordered in advance but the Company in any event reserves the right to make additional charges for the provision of these details.

6.4 All payments shall be due to the Company on presentation of invoice or as otherwise stated on the Order Form. All payments shall be sent to the Company's registered office as set out in Clause 1.9 above or such other address as may be notified in writing from time to time by the Company to the Customer.

6.5 The Company reserves the right to charge interest on late payments at the rate of 5% above the Bank of England Base Rate in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2002.

6.6 All charges and tariffs are quoted exclusive of Value Added Tax.

6.7 The Company reserves the right to change payment terms and require deposits if the Customer is more than 30 days late in making payments during the term of the Agreement in addition to or in lieu of any other remedies set out in the Conditions or otherwise available at law or in equity.

## 7. USAGE

The Customer hereby agrees to accept and abide by the AUP.

## 8. EQUIPMENT

8.1 Colocated Equipment shall at all times remain at the Customer's sole risk such that the Customer shall be responsible for insuring the Colocated Equipment against all risks.

8.2 Equipment leased from the Company shall at all times remain the property of the Company.

8.3 The Customer agrees to:

- (a) maintain, at the Customer's expense, comprehensive general liability insurance with a reputable insurance company for the full replacement cost of any equipment leased from the Company throughout the term of the Agreement;
- (b) provide the Company with evidence of the same upon request; and
- (c) undertake to ensure that all moneys received from the insurer are paid directly to the Company to meet any claim to which the payment relates.

## 9. LIABILITY

9.1 Nothing in the Agreement shall limit the Company's liability to the Customer for death or personal injury resulting from the Company's negligence.

9.2 Except for the Company's liability to the Customer listed in Clause 9.1 (where no limit applies), the Company's liability arising under or in connection with the Agreement for the provision of the Services whether in contract, tort, negligence, breach of statutory duty or otherwise howsoever arising shall not exceed the greater of:

- (a) £5000 (FIVE THOUSAND POUNDS); or
- (b) the total amounts paid by the Customer under Clause 6.1 in the month when such event (or the first event in any series of connected events) occurs.

9.3 Notwithstanding Clause 9.2, in no case shall the Company be liable either to the Customer or to any third party for or in respects of any indirect, consequential or economic loss including (but not limited to) damage, costs or expenses of any description, loss of profit, business, goodwill, turnover or any other loss arising from its performance or non-performance of its obligations in connection with the Agreement whether arising from breach of contract, tort, breach of duty, negligence or any other cause of action even if the event was foreseeable by the Company or the possibility thereof is or had been brought to the attention of the Company.

9.4 Except for the purposes of Clause 9.1, no action or proceedings against the Company arising out of or in connection with the Agreement shall be commenced by the Customer more than one year after the Services have been rendered and in this respect the Customer acknowledges that this clause constitutes an express waiver of any and all of its rights under any otherwise applicable statute of limitations.

## 10. SUSPENSION

10.1 The Services may be suspended by the Company 5 days after a notification of suspension has been issued by email or facsimile and without prejudice to the Company's rights of termination under Clause 11 in the event of the Customer:

- (a) failing to make any payment to the Company on the relevant due date for payment;
- (b) doing or allowing anything to be done which contravenes the AUP;
- (c) exceeding its credit limit without the prior written approval of the Company; or
- (d) being in otherwise breach of the Conditions.

10.2 Suspension shall not affect the liability of the Customer to pay charges and other amounts to the Company.

10.3 The Company reserves the right to suspend the Services if the Customer has not paid the required deposit before a stipulated event or exceeds four times the committed amount during the month for any of the Services or as otherwise provided in the Agreement.

## 11. TERM AND TERMINATION

11.1 The Agreement shall remain in force for a minimum period of 12 months from acceptance of the Customer's application being the date on which the Order Form was signed by the Customer unless otherwise agreed with the Company and as so stated on the Order Form.

11.2 Termination of the Agreement can be effected:

(a) by the Customer giving the Company not less than 1 month prior written notice (which for these purposes excludes email such that email notification will not be accepted as a valid method of termination) which said period of notice shall expire at any time on or after expiry of the minimum term as stated on the Order Form;

(b) by the Company at any time forthwith if the Customer commits any breach of the Agreement including (but not limited to) non-payment of any fees due;

(c) by the Company giving the Customer 30 days' prior written notice at its sole discretion for any reason; or

(d) by the Company upon receiving written notification of the institution of insolvency, receivership, bankruptcy or any other proceedings for the settlement of the Customer's debts or upon the making of an arrangement for the benefit of the Customer's creditors or upon the dissolution of the Customer.

11.3 The Company reserves the right to invalidate any or all of the Customer's Username and Internet Protocol Address issued to the Customer following termination of the Agreement and to re-allocate it or them to another customer.

11.4 Domain name hosting and transfer requests for domain name server records must be submitted in writing with the authorised signature of the domain name owner and whilst there is no charge for the transfer a small charge may nevertheless be made to cover the Company's administration costs. Domain name transfers will not be made until all outstanding amounts have been paid by the Customer such that until this happens domain names remain the property of the Company.

11.5 The Customer shall return all equipment cables and literature belonging to the Company at the Customer's own cost within 5 days of termination of the Agreement and shall ensure that it arrives in good working order otherwise an appropriate fee may be levied by the Company.

## 12. RIGHTS ON TERMINATION

12.1 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 of the Agreement by the Customer.

12.2 On termination of the Agreement the right to the use of the Internet Protocol Address allocated by the Company shall revert to the Company.

12.3 In the event of termination of the Agreement by the Company due to breach of the Conditions by the Customer, the Company shall be entitled to the balance of all payments which would but for such termination have accrued up to the earliest date upon which the Agreement could have been terminated by the Customer in accordance with the Conditions.

## 13. RELEASE OF INFORMATION

The Company shall not be required to release any domain name and may refuse to do so until the Agreement has been validly terminated and the Customer has complied with all of its obligations including (but not limited to) the payment of all sums due to the Company. Domain names remain the property of the Company until all sums due have been received.

## 14. INTELLECTUAL PROPERTY

14.1 The Company grants to the Customer a limited, non-exclusive licence to use the Services as set out in the Order Form throughout the term of the Agreement or until the Agreement is terminated (whichever date is earlier) and subject to the restrictions set forth in the Agreement which said licence does not entitle the Customer to any updates, modifications or new releases to the deliverables or software.

14.2 The Company reserves any and all of the Company's copyright, trademarks, trade names, patents and all other intellectual property rights created, developed, subsisting or used in connection with any deliverables, software, the Services or the Specification which are the sole property of the Company.

14.3 The Customer shall not transfer the Customer's licence nor sublicense the deliverables or the software except where permitted to do so by the terms of the Agreement and in particular the Customer shall not (and shall not allow any third party to):

(a) remove any product identification, copyright, trademark or other notices;

(b) sell, pledge, lease, lend, distribute over the Internet;

(c) load or use portions of the software (whether or not modified or incorporated into or with other software) on or with any machine or system that is not physically kept at the facilities of the Customer or within third party facilities contracted by the Customer.

14.4 The Customer shall not disassemble, decompile or otherwise reverse engineer the Services provided under the Agreement.



## 15. FORCE MAJEURE

15.1 The Company shall not have any liability to the Customer for any delay, omission, failure or inadequate performance of the Agreement which is the result of circumstances beyond the reasonable control of the Company. Where the Company is so affected in its performance of the Agreement it will notify the Customer in writing as soon as is reasonably possible.

15.2 Where the performance of the Agreement is affected by force majeure the Company shall use its reasonable endeavors to overcome the problem as soon as practicably possible.

## 16. NOTICES

16.1 Other than suspension notices served pursuant to Clause 10, any notice given under or in connection with the Agreement shall be in writing and shall be duly delivered if sent by first class post to the relevant address given in the Agreement or to such other address as the recipient may have previously notified in writing to the other party for that purpose.

16.2 Suspension notices served pursuant to Clause 10 shall be deemed as duly delivered and received when sent by email or facsimile to such email address or facsimile number as the Customer may have previously notified in writing to the Company.

16.3 Other than suspension notices served pursuant to Clause 10 or maintenance notices served pursuant to Clause 16.4, any notice shall be deemed to be duly received at the expiration of 48 hours after the envelope containing the notice had been posted and in proving such service it shall be sufficient to show that the envelope containing such notice was properly addressed and posted as a first class letter.

16.4 The Company will provide 5 days' notice (by email or facsimile) for any maintenance the Company wishes to undertake but in the event of emergency maintenance the Company will provide as much notice as is reasonably possible.

## 17. EXPENSES OF THE COMPANY

The Customer shall pay to the Company all costs and expenses reasonably and properly incurred by the Company in enforcing any of the Conditions or in exercising any of the Company's rights or remedies under the Agreement including (but not limited to) all costs incurred in tracing the Customer in the event that legal process cannot be effected at the last known address of the Customer.

## 18. NON-WAIVER

18.1 Any allowance of time to pay or any other form of indulgence by the Company shall in no manner affect or prejudice the Company's right to payment and interest pursuant to the Conditions.

18.2 No failure, neglect or delay in enforcing any of the terms of the Agreement may be construed as a waiver of any of the Company's rights in respect thereof nor such neglect, failure or delay a variation of the express terms of the Agreement.

## 19. INVALIDITY

In the event that any part of the Agreement is found to be invalid or otherwise unenforceable then such provision shall be regarded and construed as severable from the Agreement so as not to affect the validity and enforceability of the remainder.

## 20. CONFIDENTIALITY

20.1 Each party 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 receiving party may receive or obtain in connection with or incidental to the performance of the Agreement but subject to the remaining provisions of this Clause 20.

20.2 Notwithstanding Clause 20.1, the receiving party shall not be prevented from using any general knowledge, experience and skills not treated by the disclosing party as confidential or which do not properly belong to the disclosing party and which the receiving party may have acquired or developed at any time during the term of the Agreement.

20.3 Notwithstanding Clause 20.1, the receiving party shall not be prevented from using the information or material referred to in Clause 20.1 above to the extent such information or material comes into the public domain otherwise than through the default or negligence of the receiving party.

20.4 Notwithstanding Clause 20.1, either party shall have the right to communicate any information concerning the other party to any Government department, regulatory body or any other form of enforcement authority or as may be required by law.

## 21. ASSIGNMENT

The Customer shall not assign or transfer any of the Customer's rights or obligations under the Agreement without the prior written consent of the Company.

## 22. CLAUSE HEADINGS

Clause headings are for ease of reference but do not form part of the Agreement and accordingly shall not affect its interpretation.

## 23. ENTIRE AGREEMENT

23.1 The Services are provided subject to the Conditions to the exclusion of any other terms and conditions such that and for the avoidance of doubt no terms and conditions contained in any document previously sent by the Customer to the Company prior (or subsequent to) the Order Form being signed by the Customer shall be of any effect with respect to the Agreement unless expressly agreed in writing by a director of the Company.

23.2 The Customer acknowledges that in entering into the Agreement 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 other form of opinion or statement made by or on behalf of the Company save where expressly contained in the Agreement.

23.3 The Parties hereby agree that the Agreement constitutes the entire agreement between the Parties in respect of the Services.

## 24. VARIATION

24.1 The Company reserves the right to vary the Conditions as a result of changes required by its insurers, for operational or administrative reasons or in order to comply with changes in the law.

24.2 A current version of the Conditions may be found on the Company's website.

24.3 The Company will provide the Customer with 14 days' notice of any significant changes to the Conditions.

24.4 The Customer will keep the Company promptly informed of any changes to the Customer's address and such other information as may affect the payment of charges due.

## 25. LAW AND JURISDICTION

The Agreement is governed by the laws of England and Wales and is subject to the exclusive jurisdiction of the Courts of England and Wales.

## 26. THIRD PARTY RIGHTS

The Parties agree that it is not hereby intended that any rights should be conferred upon or enforceable by any third party as defined in the Contracts (Rights of Third Parties) Act 1999 unless the context otherwise permits.