

**SIMPLY MAIL SOLUTIONS**  
**STANDARD TERMS AND CONDITIONS OF SERVICES**

These terms and conditions ("Terms") apply to all services provided by Simply Mail Solutions (SMS) and the individual or company applying for the provision of services by SMS ("Customer"). These Terms are applicable only to the provision of services to business customers and the services are for business use only.

**PART A – GENERAL TERMS**  
**INTERPRETATION**

1 1.1 In these Terms, the following expressions shall have the following meanings:

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|----------------------------|--|
| "Billing Month"            | commences on the Live Date and will run until the corresponding date in the next Month (for example, where the Live Date is 5 <sup>th</sup> April, the Billing Month will run until 4 <sup>th</sup> May inclusive);  |
| "Charges"                  | the charges charged to the Customer for the provision of the Services calculated either in accordance with SMS's quotation supplied in writing to the Customer or if no such quotation has been supplied, in accordance with the Price List applicable at the time the Customer places an Order; |
| "Confidential Information" | Trade secrets business and other information which is identified as confidential or proprietary by either party or the nature of which is clearly confidential or proprietary;   |
| "Contract"                 | the contract for the provision of Services incorporating these Terms;  |
| "Customer Material"        | means any Material and any data or other information (including third party Material) provided to SMS by or on behalf of the Customer for use with the Services;   |
| "Customer Website"         | a website on the World Wide Web belonging to the Customer;   |
| "Customer"                 | the business customer with which the Contract is formed (as named on the Order Form or communicated to SMS over the telephone when placing an Order) in accordance with these Terms;   |

"Inappropriate Material"	Material that under the laws of any jurisdiction where the Material can be accessed is any of the following: unlawful, threatening, abusive, harmful, malicious, obscene, pornographic, profane, libellous, defamatory, infringes any Intellectual Property Rights, constitutes or encourages a criminal offence or contains a virus, worm, trojan horse or other harmful code;
"Initial Period"	the initial duration of each Service, being either 12 months or 1 month, as stated on the Order Form or as otherwise notified to the Customer in writing by SMS;
"Intellectual Property Rights"	copyrights, patents, registered and unregistered design rights, topography rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world;
"Live Date"	the date on which SMS commences provision of the Services to the Customer;
"Material"	includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, text, graphics, sound, video or any other record of any information in any form;
"Month"	a calendar month;
"Order Form"	The form (whether electronic or paper-based) on which the Customer selects the Services to which it wishes to subscribe, incorporating these Terms;
"Order"	an order for the Services placed by the Customer (using an Order Form or over the telephone or otherwise, in accordance with SMS's quotation) subject to these Terms;
"Price List"	a list of SMS's prices current at that date for each of the Services as available on SMS's Website or from SMS by post or fax on request and incorporating these Terms;
"Relevant Legislation"	laws relating to data protection and any laws governing Inappropriate Material;

"Renewal Date" the first or any subsequent anniversary of the Live Date;

"Renewal Period"	In relation to Services with an Initial Period of 12 Months, a period of 12 Months commencing on an anniversary of the Live Date;
"Server"	any computer server equipment operated by SMS in connection with the provision of the Services;
"Services"	the services identified on any quotation, Order Form or otherwise agreed to be provided by SMS to the Customer pursuant to these Terms;
"SMS"	Internet for Everything Limited trading as Simply Mail Solutions registered in England under number 05390640, whose registered office is at Unit 8, Padgate Business Park, Green Lane, Warrington WA1 4JN;
"SMS's Website"	SMS's Website located at <a href="http://www.simplymailsolutions.com">http://www.simplymailsolutions.com</a> or such other Internet Protocol address as may be adopted by SMS from time to time;
"User Details"	the Customer's login name and password and any other access details for use with the Services;
"WHOIS Registry"	any WHOIS service available on the Internet and provided by a Domain name registry for the purpose of checking Domain name availability and information; and
"writing"	references to "writing", "written" and cognate expressions shall include facsimile transmissions and Material transmitted in electronic form.

In these Terms:

the headings are for convenience only and shall not affect their interpretation;

references to clauses, Parts and Sections, unless otherwise provided, are references to clauses, Parts and Sections, of these Terms and references to any schedules unless otherwise provided, are references to schedules to the Contract;

the single includes the plural and vice versa and a reference to one gender includes the other gender;

except where the context requires otherwise the singular includes the plural and vice versa; a reference to one gender includes a reference to

the other gender; words denoting persons include firms and corporations and vice versa; the words "include" or "including" shall be construed without limitation to the words following;

a reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, re-enacted or extended at the relevant time; and includes any subordinate legislation for the time being in force made under it.

Part A of these Terms shall apply to all Services provided to the Customer. In addition to Part A, Part B of these Terms shall apply to the extent that the specific Services described in Part B are supplied to the Customer. In case of conflict between the provisions of Part A and Part B of these Terms, the provisions of Part B shall apply.

### **BASIS OF SUPPLY**

SMS shall provide the Services in accordance with the Order, subject in all cases to these Terms, which shall govern the Contract to the exclusion of any other conditions subject to which any such Order Form or quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

No variation to these Terms shall be binding unless agreed in writing by SMS.

SMS's employees or agents are not authorised to make any representations concerning the Services unless confirmed by SMS in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations, which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

Any advice or recommendation given by SMS or its employees or agents to the Customer or its employees or agents as to the application or use of the Services which is not confirmed in writing by SMS is followed or acted upon entirely at the Customer's own risk, and accordingly SMS shall not be liable for any such advice or recommendation which is not so confirmed.

Any typographical, clerical or other error or omission on SMS's Website or in any sales literature, Order Form, quotation, price list, acceptance of offer, invoice or other

document or information issued by SMS shall be subject to correction without any liability on the part of SMS.

## **ORDERS AND SPECIFICATIONS**

No Order submitted by the Customer shall be deemed to be accepted by SMS unless and until confirmed in writing (usually by invoice and covering letter acknowledging and accepting the Order) by SMS's authorised representative.

The Customer shall be responsible to SMS for ensuring the accuracy of the conditions of any Order (including any applicable specification) submitted by the Customer, and for giving SMS any necessary information relating to the Services within a sufficient time to enable SMS to perform the Contract in accordance with its conditions.

The Services and any specification for them shall be as set out in the Order (if accepted by SMS) or otherwise in accordance with SMS's current website, brochure or other published literature relating to the Services from time to time, subject always to these Terms.

SMS reserves the right to make any changes to the Services, which are required to conform with any applicable statutory or E.U. requirements or which do not materially affect the nature or quality of the Services.

No Order which has been accepted by SMS may be cancelled by the Customer except with the agreement in writing of SMS and on conditions that the Customer shall indemnify SMS in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by SMS as a result of such cancellation.

## **CHARGES & PAYMENT**

4.1 Unless otherwise agreed in the writing the Charges and any other sums payable under the Contract (including any additional sums which are agreed between SMS and the Customer for the provision of the Services or which, in SMS's sole discretion, are required as a result of the Customer's instructions or lack of instructions or any other cause attributable to the Customer) shall be paid by the Customer (together with any applicable Value Added Tax and without set-off or deduction) within 14 days of each invoice.

All Charges quoted to the Customer are exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the applicable rate from time to time.

Unless otherwise specified by SMS in writing, the Customer shall pay the Charges either annually in advance for Services which are subject to a 12 month Initial Period or monthly in advance for Services which are subject to a one (1) month Initial Period. Payment of the Charges in advance is a pre-condition to receipt of the Services.

Services will not commence until SMS have received the first payment for the Services ordered. SMS reserves the right to suspend or terminate the provision of Services if Charges are not received by SMS in accordance with payment times for each of the Services as communicated by SMS to the Customer.

Any third party costs (including but not limited to court costs) which SMS may incur in respect of processing the payment for the Services on behalf of the Customer (for example, in respect of cheques which are refused for insufficient funds, or bank payments where SMS incurs a charge) shall be paid by the Customer within 7 days of being so notified in writing by SMS.

Time for payment shall be of the essence and no payment shall be deemed to have been made until SMS has received a cheque, successfully processed the customers credit card or received wired funds directly into a SMS bank account.

If the Customer disputes the amount of any invoice it must notify SMS in writing within 7 days of receiving such invoice. The Customer shall pay the undisputed part of any such invoice with the balance, if any, to be paid following resolution of the dispute.

If any sum payable under the Contract is not paid within 14 days of the due date then (without prejudice to SMS's other rights and remedies):

SMS may charge interest on a daily basis on the overdue amount and on outstanding interest from the date of such failure until payment (both before and after judgment) at the rate of 4% above the base rate for the time being in force of National Westminster Bank plc. SMS reserves the right to claim

interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or  
4.9.2 4.10 4.11 5 terminate or suspend without liability and without prior notice the Contract and/or the Services to which the late payment relates forthwith in accordance with clause 11.

Non-delivery or non-performance of services by any third party other than SMS's sub-contractors shall not give the Customer any right to delay any payment to SMS or to make any claim whatsoever against SMS.

SMS may at any time and from time to time by not less than 28 days notice in writing to its Customers vary the Charges for any Services supplied by it. Within 7 days of receiving such notice the Customer may notify SMS in writing that it wishes to terminate the Services affected by the proposed increase with effect from the date of any proposed change to the Charges and SMS may then choose to alter the Charges, withdraw the notice, or accept the Customer's notice of termination.

#### **TITLE IN PROPERTY**

5.1 5.2 6 Ownership in any equipment (such as a modem) which SMS may supply to the Customer as part of the Services remains the property of SMS unless the Customer has paid SMS in full for any such equipment and all other sums which are or which become due to SMS from the Customer on any account.

Where the Customer's right to possession has terminated the Customer grants SMS, its agents and employees an irrevocable licence at any time to enter any premises where such equipment supplied by SMS is or may be stored in order to recover them.

#### **TERM AND RENEWAL**

6.1 6.2 The Contract shall commence on the date of written acknowledgment by SMS of the first Order for Services placed by the Customer and unless otherwise terminated in accordance with the terms of the Contract shall continue until the expiry or termination of the last of the Services.

Each of the Services shall commence on the Live Date for that Service as agreed in writing by SMS and the Customer and unless otherwise stated in writing in the Contract or terminated in accordance with these Terms the Contract shall continue

for the Initial Period for that Service and thereafter for so long as the Charges are paid by the Customer:

6.2.1 6.2.2 6.3 7 for Services which are subject to an Initial Period of twelve Months, for further Renewal Periods unless and until SMS receives notice in writing from the Customer to terminate that Service prior to the Renewal Date, such notice to take effect from the first day of the next Renewal Date; or

for Services which are subject to an Initial Period of one Month, for further periods of one Month, unless and until SMS receives 30 days notice in writing from the Customer to terminate that Service, such notice to take effect from the first day of the next Billing Month following the expiry of the 30 days notice.

The Customer grants SMS permission to charge any sums due under the Contract at a Renewal Date and/or at the beginning of a Billing Month for all Services which have not been terminated pursuant to clause 6.2 above to any debit card, credit card or bank accounts of which SMS has been informed pursuant to the Order. Where debit card, credit card or bank account information has not been provided SMS shall invoice the Customer for the renewed Services and payment shall be due within 14 days of the date of such invoice (as stated above). SMS shall not be required to provide any renewed Services until payment for the same has been received in full.

### **CUSTOMER AUTHORISATION, OBLIGATIONS & UNDERTAKINGS**

7.1 7.2 7.2.1 The Customer hereby appoints SMS to act on its behalf in conjunction with the provision of the Services.

The Customer acknowledges and accepts that to enable SMS properly to provide the Services it must co-operate with SMS as required by SMS and shall take account of and comply with all reasonable directions of SMS in relation to its use of the Services. In particular:-

the Customer must provide SMS with accurate details of its trading name, e-mail and physical addresses, contact telephone numbers (including a valid landline number) and fax numbers and the Customer shall promptly notify SMS in writing of any alterations to such information from time to time. The Customer shall be solely responsible for the accuracy and keeping up-to-date of all information and Materials which it provides to SMS;

the Customer shall at its own expense supply SMS with all necessary Customer Material, and all necessary data or other information relating to the Services, within sufficient time to enable SMS to provide the Services in accordance with these Terms. The Customer shall ensure the accuracy of all Customer Material;

the Customer shall observe authentication processes or security relating to the use of the Services and keep all User Details confidential and restricted to those members of its staff who need to know such details and shall ensure all such staff are aware of the confidential nature of the User Details and treat it accordingly. The Customer shall be responsible for any use of the Services made through the Customer's User Details. The Customer shall notify SMS without delay if it believes its User Details have been compromised;

the Customer must obtain the consent of individuals whose personal data are to be held on a domain name register or are otherwise provided to SMS and otherwise comply fully with the provisions of the Data Protection Act 1998 in respect of such data; and

where the Customer is offering goods or services through any Website hosted by SMS as part of the Services, the Customer undertakes to comply fully with the requirements of the Distance Selling Directive and any other applicable consumer laws in relation to such Website and, in particular but without prejudice to the foregoing, undertakes not to accept payment by debit or credit card for such goods or services except via such secure payment system as may be approved by SMS in advance in writing or storing or processing credit card information on any server offered by SMS as part of the Services and otherwise on the terms of Section 4 ("e-commerce") below.

The Customer shall at its own expense retain duplicate copies of all Customer Material and insure against its accidental loss or damage. SMS shall have no liability for any such loss or damage, however caused.

The Customer shall ensure that it has suitable computer and communications equipment to utilise the Services from time to time. The Customer agrees to comply with any minimum requirements made available to the Customer in writing by SMS's from time to time.

The Customer agrees to use the Services for lawful business purposes only and to comply with Relevant Legislation and all other laws and regulations applicable to its use of the Services. It is a condition of the Contract the Customer shall not (and shall ensure that others under its control will not) directly or indirectly:

- use the Services in a manner which infringes the Intellectual Property Rights, proprietary or personal rights of any third party;
- use the Services to knowingly or recklessly receive, access, post, transmit, offer for sale or link to any Inappropriate Material or to promote illegal or unlawful activity, or be otherwise actionable or in violation of any rules;
- avoid any authentication processes or security of the Services or interfere with the use of the Services by other customers of SMS;
- impersonate any person, or entity or misrepresent its affiliation with anyone or entity;
- use the Services to gain unauthorised access to other computer systems or interfere with services to other host providers, networks or websites;
- access or attempt to access parts of the Services that it is not authorised to access or collect or store Material belonging to other customers;
- otherwise use the Services so as to bring SMS or its services into disrepute;
- do anything which may result in the reduced performance of SMS's Server, network or services to the detriment of SMS, other customers of SMS or any other third party, including, without limitation, sending unsolicited or spam e-mails, partaking in file sharing, or doing anything which may result in excess network traffic; and/or
- commit any act whereby access is gained by the Customer to any information or resources of any body corporate or person, individual, partnership, government agency, national institution, charity or recognised organisation without first having obtained authority from those persons or institutions.

The Customer warrants in relation to all Customer Material that it has either: a) sole ownership of all Intellectual Property Rights in the Customer Material; or b) has obtained all necessary consents, approvals and licences for the use of Customer Material in connection with the Services and the use of such Customer Material will not infringe any Intellectual Property Rights belonging to any third party.

In the event of allegations of a breach of clauses 7.2.1, 7.2.3, 7.2.4, 7.2.5, 7.2.6, 7.5 and/or 7.6 above, or if SMS reasonably suspects such a breach has occurred, SMS may, without giving notice to the Customer and without liability, suspend availability of the whole or part of the Services or the Customer's Website over the Internet (if hosted by SMS in accordance with Section 2 ("Website Hosting") below) or remove the Customer's Website or any part of it from SMS's computer system, pending clarification of such allegations or suspicion.

The parties shall notify each other as soon as reasonably possible after becoming aware of any third party allegation of a breach of the provisions of clause 7.5 and/or clause 7.6 above.

The Customer acknowledges that SMS may monitor and record its use of the Services.

The Customer acknowledges that SMS does not operate or exercise control over, and accepts no responsibility for the content of the Customer Website or the Customer's Materials received by SMS or transmitted using the Services.

### **INTELLECTUAL PROPERTY**

8.1 8.2 8.3 9 The content of the SMS Website provided to the Customer by SMS is protected by Intellectual Property Rights. The Customer may retrieve and display the content of the SMS Website on a computer screen but may not otherwise reproduce, modify, copy or distribute or use for commercial purposes any of the Materials or content on the SMS Website without SMS's prior written permission.

No licence is granted to the Customer in these Terms to use any trade mark of SMS.

The Intellectual Property Rights in the Customer Materials shall remain with the Customer (or relevant third party as appropriate) but SMS shall be granted a non- exclusive licence to use the Customer Materials for the purposes of providing the Services in accordance with the Contract.

### **CUSTOMER INDEMNITY**

9.1 The Customer hereby agrees fully to indemnify, keep indemnified and hold harmless SMS, its officers, employees, agents, sub-contractors and affiliated companies from and against any and all costs, claims, losses, damages and expenses (including, but not limited to, legal Charges) sustained or incurred by SMS or any of its officers,

employees, agents, sub-contractors or affiliated companies directly or indirectly and in any jurisdiction as a result of:

9.1.1 9.1.2 9.2 10 any breach of any of the warranties given by the Customer in the Contract; or  
the Customer or any party for whom it is legally liable's negligence, wilful default, or breach of any of its obligations in the Contract.

The Customer agrees to pay on an indemnity basis all costs and disbursements incurred by SMS in relation to any action brought by SMS to enforce the provisions of the Contract whatever the value of the claim.

### **SMS WARRANTIES AND LIABILITY**

10.1 10.2 10.3 10.4 10.5 SMS makes no warranties or representations that any Service will be uninterrupted or error-free. SMS will use all reasonable endeavours to correct any material defect or interruption in the Services and to maintain the availability of the Services during the service periods stated to the Customer, but save as aforementioned the Customer accepts all Services provided hereunder "as is" without warranty of any kind.

All implied conditions, warranties and terms (whether express or implied by statute, common law, custom or otherwise) including, but not limited to, those relating to the exercise of reasonable care and skill, fitness for purpose and satisfactory quality (where applicable) are hereby excluded in relation to each of the Services to be provided hereunder to the fullest extent permitted by law.

SMS shall not be liable for any services or products to be supplied by any third party.

SMS shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.

SMS shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any breach of the Contract by the Customer or any act, misrepresentation, error or omission made by or on behalf of the Customer.

SMS shall not in any circumstances be liable for loss of or damage to data, and the Customer agrees to take back-ups in accordance with best computing practice and retain full copies of all of the Customer's data and Material (including copies of any Website) given to SMS for the performance of the Services.

SMS will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatsoever and howsoever arising (whether out of the provision of the Services or failure to provide the Services or otherwise), loss of production, loss of or corruption to data, loss of profits, revenue or contracts, loss of operation time, loss of goodwill or anticipated savings or any liability of the Customer to a third party, even if SMS has been advised of the possibility of such loss. Subject to clause 10.9 below, SMS's maximum aggregate liability to the Customer under or in connection with the Contract in respect of any direct loss (or any other loss) to the extent that such loss is not excluded by this clause 10, whether such claim arises in contract or in tort shall not exceed a sum equal to twice the Charges received by SMS relating to the Services pursuant to which such claim arises.

Nothing in these Terms shall apply so as to exclude or restrict liability for death or personal injury resulting from the negligence of SMS, its employees or its sub-contractors.

SMS shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of SMS's obligations in relation to the Services, if the delay or failure was due to any cause beyond SMS's reasonable control.

## **TERMINATION**

11.1 11.2 11.2.1 If either party commits any material breach of these Terms (including a breach by the Customer of clause 7.5) and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, the other party may terminate the Service or Services in respect of which any breach is considered by that party to have been committed or all Services and the Contract on written notice.

SMS may terminate the Contract by notice in writing to the Customer having immediate effect if:

the Customer is a company and a resolution is passed for its winding up or a petition for its liquidation is presented; or

the Customer is an individual and a petition for bankruptcy is presented against it;  
a receiver or liquidator (where the Customer is a company) or (where the Customer is an individual) a trustee in bankruptcy is appointed over it or any of its assets;  
the Customer proposes or enters into any arrangement or composition with or for its creditors (including any voluntary arrangement); or  
the Customer ceases, or threatens to cease, to carry on its business.

In the event that any of the circumstances identified in clause 11.2 arises, SMS shall have the option to terminate the Service or Services in respect of which any breach is considered by SMS to have been committed or all Services and the Contract; and

In the event that any of the circumstances identified in Clauses 11.1 or 11.2 arises, SMS shall be entitled to retain any sums paid to it by the Customer hereunder and recover any sums due to it pursuant hereto whether invoiced or not at the date of termination.

SMS may terminate the Contract or any of the Services or part of any Services on 12 months' written notice to the Customer.

Any termination of the Contract for any reason shall be without prejudice to any other rights or remedies a party may be entitled to at law or under the Contract and shall not affect any accrued rights or liabilities of either party.

Upon termination or expiry of the Contract or any or all of the Services for whatever reason:

SMS will be under no obligation to retain any of the Customer's data and Material held on SMS's computer and will disable access to any Website and/or network through which the Customer received the terminated Services;

the Customer shall not directly or indirectly attempt to access the Services which have terminated or expired; and

all provisions of the Contract which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter.

If SMS terminates the Contract pursuant to clause 11.1 or 11.2 SMS may accept or decline any requests for supply of the Services in the future by that Customer, but if it accepts the same the Customer will be required to make payment of SMS's outstanding charges under the Contract in addition to SMS's standard reconnection charge applicable at the time of reconnection and SMS shall not be obliged to carry out the reconnection until all such amounts, together with payment for future Services have been paid in full.

## **CONFIDENTIALITY**

12.1 12.1.1 12.1.2 12.2 12.3 12.3.1 12.3.2 12.3.3 12.3.4 12.3.5 13 Each of the parties agrees (subject to clauses 12.2 and 12.3) not to:

disclose any Confidential Information received from the other party; or  
make any use of any such Confidential Information other than for the purposes of performance of the Contract.

Each party may disclose Confidential Information received from the other to its responsible employees, consultants, sub-contractors, suppliers or legal advisors who need to receive the information in the course of performance of the Contract or as required by law.

The confidentiality obligations under clause 12.1 shall not apply to any information which:

is or subsequently becomes available to the general public other than through a breach by the receiving party; or  
is already known to the receiving party before disclosure by the disclosing party;  
is developed through the independent efforts of the receiving party;  
the receiving party rightfully receives from a third party without restriction as to use; or  
is required by a competent judicial or administrative body.

## **GENERAL**

13.1 These Terms (together with any terms contained in an Order Form which have been accepted by SMS in accordance with clause 3.1 and any other document expressly incorporated in the Contract) constitute the entire Contract between the parties, supersede any previous Contract or understanding and may not be varied except in

writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

13.2 13.2.1 13.2.2 13.3 13.4 13.5 A notice required or permitted to be given by either party to the other under these Terms shall be in writing and may be served personally or by first class prepaid recorded delivery or registered post or by facsimile transmission to the addressee at the following address:

To SMS: at the postal address or fax number shown on SMS's Website or an alternative address which SMS may give to the Customer.

To the Customer: at the postal address or fax number specified by the Customer when ordering the Services or an alternative address or fax number which the Customer may give to SMS in writing.

A notice shall be deemed to have been served, if by personal delivery when delivered, if by first class prepaid recorded delivery or registered post 2 clear business days after having posted to the correct addressee and pre-paid or if sent by facsimile transmission to the correct fax number of the recipient as may at the relevant time have been notified in writing by the recipient, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next business day provided (in each case) that a confirmatory copy is sent by first class prepaid post or by hand by the end of the next business day.

As an alternative to clause 13.2 and 13.3, where a secure extranet facility is made available to the Customer by SMS (for the purpose of this clause, "Extranet") and the Customer's access to the Extranet has been authenticated by SMS, the Customer and/or SMS may give a notice under these Terms to the other using the Extranet and such notice shall be deemed to have been served, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next business day.

Subject to clause 4.11, SMS may at its sole discretion, change or modify these Terms upon giving the Customer 28 days' written notice of the same. Within 7 days of receiving such notice the Customer may notify SMS in writing that it wishes to terminate the Contract with effect from the date of any proposed change to the

Terms and SMS may then choose to alter the Terms; withdraw the notice; or accept the Customer's notice of termination.

13.6 13.7 13.8 13.9 13.10 13.11 13.12 13.13 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

The rights and obligations of the Customer under the Contract are personal to the Customer and the Customer undertakes that it shall not, without the prior written consent of SMS, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.

SMS reserves the right to sub-contract any of the work required to fulfil its obligations hereunder to a third party and/or to assign or transfer the Contract or part thereof to a third party.

Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.

No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

A person who is not party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract and the provisions of that Act are hereby expressly excluded.

The Contract and the rights and obligations of the parties shall be governed by and construed in accordance with English law.

## **PART B - SPECIFIC TERMS**

### **SECTION 1 – DOMAIN NAME REGISTRATION 1 2 2.1 2.2 2.2.1 2.2.2 2.2.3 2.3 2.4 2.5**

Together with the General Terms, this Section 1 applies to the provision of Domain Name Registration Services by SMS.

The Customer recognises and accepts that:

SMS reserves the right to reject any request by the Customer to register any particular domain name or to discontinue processing such a request if SMS considers such application might expose SMS to legal or other proceedings including arbitration or regulatory proceedings on the part of any assigned names authority.

Subject to clause 3, the extent of SMS's service in relation to the registration of domain names is:-

to forward the Customer's application to the appropriate Registry;  
to provide administrative support in progressing the registration;  
in the event of registration, to notify the Customer of the renewal date for such registration.

Subject to using its reasonable endeavours to contact the Customer when billed for the renewal of any Customer domain name by the domain name registry to pass such bill to the Customer at the e-mail address most recently provided by the Customer SMS will have no involvement in, or responsibility for the Customer's use or retention of a domain name once registered and it shall be the sole decision of the Customer whether or not to renew such registration.

For the avoidance of doubt and in addition to the provisions of clause 10 of Part A, in no circumstances will SMS be liable to the Customer for any loss of profit, business or anticipated savings suffered by the Customer on account of a failure to obtain or loss of a domain name.

SMS makes no warranty or representation of any kind in relation to the likelihood or otherwise of a particular domain name application being successful because domain name registries retain the right at their discretion to register or refuse to register a domain name applied for by SMS on behalf of the Customer.

The Customer's use of the domain name once registered may be challenged by a third party; if so, or if any other dispute arises the procedures laid down by the relevant registry will apply and these may include the suspension or revocation of a Customer's application for a domain name or the registration of a domain name allocated to the Customer and SMS will have no responsibility or involvement in relation thereto.

It is the Customer's responsibility to pay any and all renewal charges in respect of each domain name registered by SMS on the Customer's behalf.

Domain names are registered on a first come, first served basis.

The registration of a domain name does not confer any legal rights to a name or its use and any disputes between the Customer and a third party are to be settled using normal legal methods or appropriate arbitrations under any assigned name authority. SMS will not be drawn into any such argument or dispute in any circumstances.

An application for the registration of a domain name cannot be treated as having been successful until the Customer is shown as the holder of that registration in the applicable WHOIS database.

The Customer warrants to SMS that:-

- all information provided by the Customer to SMS in respect of any domain name application is true and correct, and that any additions or alterations thereto in the future will also be true and correct;
- it has the legal right to apply for and use the domain name(s) requested as a Website address; and
- the domain name(s) and its use as a Website address does not and will not infringe the Intellectual Property Rights or any other rights of a third party.

The Customer acknowledges that the application process, registration and subsequent use of any domain name will be subject to the rules and policies from time to time of the relevant registry and the Customer agrees to abide by all such rules and policies. Accordingly, the Customer undertakes to obtain and read those rules and policies before applying for a domain name.

If the Customer's application for a particular domain name is rejected, SMS will return to the Customer any payments received in respect of that application but SMS shall not be required to do so if the rejection is caused or contributed to by any

breach of clause 3 of this Part B or if in SMS' reasonable opinion it arises by reason of the failure of the Customer to follow any advice given to it by SMS.

## **SECTION 2 – WEBSITE HOSTING** 6 7 8 9 10 11

Together with the General Terms, this Section 2 applies to the provision of Web Hosting Services by SMS.

The Customer grants to SMS, for the duration of the Contract, a non-exclusive, non-transferable licence to host the Customer Website in accordance with the provisions of the Contract, solely for the purposes of providing the Services and availability of the Website over the Internet.

The Customer shall be primarily responsible for publishing and updating the Customer Website, where, exceptionally and as part of a technical service request initiated by the Customer and accepted by SMS, SMS agrees to update the Customer website. The Customer will provide all Customer Material which the Customer wishes SMS to post on the Customer Website in a condition which shall be "server-ready" and which requires no additional manipulation on the part of SMS. SMS shall be under no obligation to validate such Customer Material for content, correctness, legality or usability and the Customer shall retain its own copies of all such Customer Material.

The Customer recognises that using SMS's Website Hosting Services requires a certain level of knowledge on the Customer's part in the use of Internet languages, protocols and software. The following examples are offered:

- Web Publishing: requires a knowledge of HTML, properly locating and linking documents, FTPing Web contents, graphics, sound, text, imagemapping etc
- CGI scripts: requires a knowledge of the UNIX environment, Telnet, Vi, Perl, C Shell, permissions etc

The Customer warrants that it has the necessary knowledge referred to in clause 9 above and acknowledges that it is not the responsibility of SMS to provide such knowledge or to provide customer support unless otherwise agreed in writing with SMS.

The Customer acknowledges and accepts that it bears sole responsibility, legal and otherwise, for the content of all Customer Material appearing on its Website and for its compliance with relevant legislation. For the avoidance of doubt, this clause shall

apply to all Material, whether posted on the Customer's Website by or on behalf of the Customer (whether by SMS or a third party).

12 12.1 12.2 13 14 14.1 14.2 14.3 15 The Customer warrants, represents and undertakes in relation to all Customer Material (including any Material which it requests SMS to post on the Customer Website) that:

it is not Inappropriate Material;

the Customer either has sole ownership of all Intellectual Property Rights in the Customer Material in each jurisdiction from which the Website may be accessed and/or has obtained full and effective licence(s) from all relevant third parties allowing the Customer or a third party acting on behalf of the Customer to use the Material and to permit its dissemination worldwide;

The Customer undertakes not to link to any Inappropriate Material from the Customer Website and, where it becomes aware of any link between the Website and any Inappropriate Material agrees to sever that link forthwith.

In addition to clause 7.7 of Part A above, SMS shall retain the right at all times to refuse to post any Material and to suspend availability of the Customer Website, place a prominent notice on the Customer Website where an allegation of defamation or Intellectual Property Right infringement is made by a third party or place a link on the Website to another Website containing the alleged's version of events and/or to remove any Material already appearing on the Website which in the opinion of SMS may under the laws of any jurisdiction from which it is possible to access the relevant Website:

constitutes or would if posted constitute Inappropriate Material;

breaches or would if posted breach Relevant Legislation or any other applicable regulations, standards or codes of practice (notwithstanding that compliance may not be compulsory); and/or

harms or would if posted harm the reputation of SMS in any way.

SMS's rights to suspend availability of the Customer's Website and/or remove content under clause 14 of Part B above shall be without prejudice to the Customer's sole responsibility for content of the Website under clause 11 of Part B and to the warranties given by the Customer relating to that content in clause 12 of Part B. The

Customer agrees to co-operate with SMS in relation to the investigation of any allegations falling within the scope of clause 14 of Part B above.

16 17 18 19 20 Posting of Material by SMS on the Customer Website shall not under any circumstances constitute a waiver of any of its rights in relation to such Material or of its rights in relation to any breach of the Customer's obligations under the Contract.

The Customer undertakes fully to virus-check all data and Material supplied to SMS pursuant to the Contract.

The Customer undertakes not to embark on any course of action, whether by use of the Customer Website or any other means, which may cause a disproportionate level of Website activity without providing at least seven day's prior notice in writing to SMS.

In the event that the Customer, whether by breach of clause 11 of Part B above or otherwise, uses substantially more Server resources than the average used by them over the previous month or otherwise makes use of the Services which in the reasonable opinion of SMS is excessive or otherwise to the substantial detriment of the other customers for the Services SMS reserves the right to suspend or limit the provision of Services to the Customer. SMS will, where practicable, give the Customer such notice as is reasonably practicable of its intention to operate pursuant to this clause.

The Customer will be liable for any excess network traffic over the limit as specified in the Price List or as specified by written quotation' and in the event of any network traffic attributable to the Customer SMS may charge additional Charges in accordance with clause 4 of Part A above.

### **SECTION 3 – E-MAIL SERVICES (including e-mail forwarding) 21 22 23**

Together with the General Terms, Section 3 applies to the provision of e-mail services by SMS.

When sending e-mail, the Customer acknowledges that it is responsible for complying with any Relevant Legislation.

The Customer acknowledges that all e-mails sent via SMS's network are automatically anti-spam and anti-virus scanned and SMS reserves the right to use whichever software programs it chooses to perform such scans.

Notwithstanding clause 23 of Part B, the Customer acknowledges that SMS is not responsible for the security of the contents of e-mail sent or received by the Customer.

SMS will use its reasonable endeavours to ensure that messages are routed accurately and promptly but does not accept any liability for non-receipt, non-delivery or misrouting of e-mail or any other failure of the e-mail system.

SMS's policy is to respect the privacy of e-mail messages sent, received forwarded or otherwise dealt with by it and the Customer acknowledges that SMS will therefore not monitor, edit or disclose the contents of such messages unless required to do so by law or competent authority or to protect SMS's rights and/or position and that it will maintain as Confidential Information any email messages it does monitor.

#### **SECTION 4 – E-COMMERCE/CREDIT CARD CLEARING 27 28 29**

Together with the General Terms, Section 4 applies to the provision of E-commerce services by SMS.

The following definitions will apply to this Section 4 in addition to those set out in the General Terms:

Internet Merchant Bank	a clearing bank which provides internet merchant accounts for use with Credit Card Clearing;
E-Commerce	the service offered by SMS allowing credit and debit card payments to be accepted through the Customer's Website using SSL technology and sent to them in an encrypted e-mail, PGP or other encryption method approved by SMS in writing; and

In providing Credit Card Clearing Services SMS acts as a mere intermediary facilitating the clearing of credit and debit cards between the Customer and the Internet Merchant Bank. The Customer acknowledges that SMS does not provide payment processing services.

SMS has put in place various security procedures to maintain the Credit Card Clearing Services and SMS's systems are as secure as possible, including the use of the Payment Card Industry Security standard to encrypt personal information and credit card details

In order to use the Credit Card Clearing Services the Customer must:

- obtain and maintain an Internet Merchant account from an Internet Merchant Bank;

- set-up such merchant accounts as are required to accept transactions in currencies other than sterling as it deems necessary; and

- obtain any and all necessary consents, approvals and permissions from its customers and the Internet Merchant Bank to allow SMS to provide the Credit Card Clearing services in accordance with the Contract.

The Customer agrees to use only PGP or other encryption method for the transmission of debit card and credit card information and to use only SSL to accept debit and credit card payments through the Customer website.

The Customer acknowledges that the information provided by its customers is not checked by SMS and, accordingly, that SMS cannot be held liable for the accuracy of such information.

For the avoidance of doubt and in addition to the provisions of clause 8 of Part A above, in no circumstances will SMS be liable to the Customer for any loss of profit, business or anticipated savings suffered by the Customer as a result of:

- the Customer's failure to obtain or maintain an internet merchant account with the Internet Merchant Bank;

- failure of the Internet Merchant Bank to process any E-Commerce or Credit Card Clearing transaction;

late or incorrect processing of any E-Commerce or Credit Card Clearing transactions by the Internet Merchant Bank irrespective of whether the mistake has arisen as a result of incorrect and/or inadequate information provided by SMS;

fraud committed in the course of an E-Commerce or Credit Card Clearing transaction (howsoever committed) SAVE THAT SMS shall be liable to the Customer for loss, damages, costs, claims and expenses arising solely as a result of fraud committed by SMS or its employees or officers.

SMS makes no warranty or representation of any kind in relation to any processing of any E-Commerce or Credit Card Clearing transactions by the Internet Merchant Bank.

The Customer undertakes to SMS that it will:

seek appropriate registration under the Data Protection Act 1998 and that it will only process data pursuant to that Act;

take all steps necessary to ensure all transactions undertaken as part of E-Commerce or E-Commerce Plus are dealt-with with the utmost privacy and all information in relation thereto is treated as Confidential Information.

Without prejudice to the terms of clause 35 of Part B above, the Customer hereby indemnifies and will keep indemnified and hold harmless SMS in respect of any breach of its responsibilities in respect of clauses 32 and 37 of this Section 4, Part B.

## **SECTION 5 – BROADBAND** 39 40

Together with the General Terms, Section 5 applies to the provision of Broadband Services provided by SMS.

SMS uses BT and/or its resellers ("BT") for the provision of Broadband Services. To use the Broadband Service the Customer will require an appropriate fixed BT telephone line. The Customer is responsible for securing the necessary telephone line to utilise the Broadband Services. SMS is not responsible for disruptions to BT networks and phone boxes. If the Customer encounters any problems with the same it should contact BT or request that SMS raise a query with BT on the Customer's behalf.

The Customer acknowledges that the provision of Broadband Services may be subject to a technical feasibility survey by BT and is subject to the successful activation of Broadband to the Customer. If BT informs SMS that the supply of Broadband is not technically feasible or it is unable to carry out the survey or activate the Broadband service SMS will inform the Customer and end the Order for Broadband Services without charge to the Customer (refunding any Charges already received from the Customer in respect of the effected Order for Broadband Services).

If BT increases its charges to SMS in connection with the Broadband Services, such increase will be passed on to the Customer, provided that SMS gives to the Customer 28 days' notice in writing of its intention to increase the Charges for the Broadband Services. Within 7 days of receiving such notice the Customer may notify SMS in writing that it wishes to terminate the Contract in respect of the Broadband Services with effect from the date of any proposed change to the Charges and SMS may then choose to alter the Charges, withdraw the notice, or accept the Customer's notice of termination.

The Broadband Service does not currently have any limits on the amount of access the Customer may have or the amount of data the Customer may download. However, SMS reserves the right to review this policy for the benefit of the majority of users and may introduce limits in the future. SMS will notify the Customer if it changes.

The Customer undertakes to use the Broadband Services for business purposes only and to not use the Services for inappropriate purposes such as file sharing.

If the Customer is in breach of clause 44 of Part B above, SMS may (in addition to its other rights contained in these Terms) in its sole discretion suspend, restrict or terminate the availability of Broadband Services to the Customer.

The Customer is responsible for configuring and managing its own firewalls and for taking all precautions necessary to secure its network.

Any equipment provided to the Customer in connection with the Broadband Services is owned and supplied to SMS by third party suppliers and any warranties applying to such equipment will be provided by the relevant third party supplier.

## **SECTION 6 - DATA PROTECTION**

To the extent that performance of the Services by SMS involves the processing of personal data (as defined in the UK Data Protection Act 1998) belonging to or controlled by the Customer ("Personal Data"):

(a) SMS shall process that Personal Data only in accordance with the Customer's instructions;

(b) SMS represents and warrants to Customer that it shall take and implement all such technical and organisational security procedures and measures as are necessary or appropriate to preserve the security and confidentiality of the Personal Data processed by it or to which it has access; and

(c) SMS shall permit the Customer (by its duly authorised representatives and upon reasonable prior notice to SMS) to inspect and audit SMS's data processing activities hereunder, and shall comply with all requests or directions by the Customer during or as a result of such inspection and/or audit, to enable the Customer to verify and/or procure that SMS is in full compliance with its data processing obligations under this Agreement.

SMS reserves the right to change the IP address or IP block which is allocated to the Customer from time to time.