

## TERMS & CONDITIONS OCTOBER 2006

Any agreed variation or alteration to part of these terms and conditions as annexed to this Contract will not invalidate the remainder or the whole. Any alteration or addition to the supplies instructed on the order will required to be the subject of a new order. TMG Technology Ltd. is entitled to suspend services if the User does not adhere to any or several conditions of this Contract.

### 1. DEFINITIONS

In these terms and conditions TMG Technology Ltd. is referred to as the Company, and the Client is the customer purchasing the services from TMG Technology Ltd.  
Unless the context otherwise requires:

“**Services**” means provision of Internet design services, software development services, domain name registration, hosting services, bandwidth provision, email and any other service or facility provided by the Company to the Client including specifically but not exclusively services known as;

“**Design**” means the creation and organisation of graphical and text elements into a cohesive, visually effective and efficient communication of the Client’s aims and objectives.

“**Server**” means the computer server equipment operated by the Company or provided by the Client in connection with the provision of the Services;

“**Virtual Server**” means the area on the Server allocated by the Company to the Client for use as a site on the Internet;

“**URL**” means Uniform Resource Locator and refers to a web site address e.g. [www.yourcompany.com](http://www.yourcompany.com).

“**Contract**” means the Contract between the Company and the Client incorporating these conditions and the Company’s Order Form (where completed).

“**Charges**” means the charges as agreed on the Order Form (where completed) and the Company’s latest published prices for products and services requested or incurred during the Contract period.

“**System**” means the Server and the Software and the method by which they are used to perform the functions agreed by the Company and the Client.

“**Open Source Software**” means all computer programmes to be provided by the Company under the Contract for use within the system that that meets the open-source definition as laid out by the Open Source Initiative (<http://www.opensource.org>) and its associated licences.

“**Software**” means all computer programmes supplied or developed by the Company and provided under the Contract for use within the system together with any amendments, alterations, enhancements or modifications supplied to the Client by the Company from time to time.

“**Other Software**” means all computer programmes to be provided by the Company to the Client under the Contract for use within the System under sub-licence from the Suppliers.

“**Supplier**” means a person or corporate body who contracts to supply part or all of the Server or Other Software to the Company for the Client.

“**Charges**” means the charges as agreed on the Order Form (where completed) for products and services requested or incurred during the Contract period.

“**Bandwidth**” means the allocated transmission capacity, measured in bits per second, of the network connection as specified in the Contract;

“**Data transfer**” means all traffic that passes through the Virtual Server including specifically but not exclusively web traffic, email, FTP transfers and any telnet session data;

“**Site**” means the premises or location at which Service is or is to be provided under this Contract;

“**Internet**” means the global data network comprising Internet connected networks using TCP/IP (Transmission Control Protocol/Internet Protocol) Internet Standards means the protocols and standards defined in the following Internet documents: RFC 1009,1122,1123 and 1250 and any future such protocols and standards as appropriate;

“**Web page**” means a document on the Web which may be viewed in its entirety without leaving the applicable distinct URL address.

“**The Project**” means the supply, delivery, installation, testing and setting to work of the System and all other

work required to be carried out by the Company under the Contract, and any work or services the Client has to carry out and any facilities, materials or equipment the Client has to supply in accordance with the Contract and any assistance the Client gives to the Company during the duration of the Contract excluding all responsibilities or obligations relating to support, maintenance or web hosting services.

**“Client’s Representative”** means a person duly appointed by the Client and notified in writing to the Company, to act as the Client’s representative for the purpose of the Contract.

**“Project Manager”** means the Company’s senior representative involved in the Project.

**“Project Controller”** means the Company’s representative mainly responsible for the day to day liaison with the Client’s staff and the supervision of the Company’s staff employed on the project.

**“Installation Site”** means the site where the system is located.

**“Intellectual Property”** means all intellectual property of whatever nature anywhere in the world and the rights subsisting therein, including, without prejudice to the generality of the foregoing: discoveries; inventions; designs; processes; know-how; research; works of authorship; computer software; databases; trade or business names; domain names; goodwill; patents and patent applications; trademark and trademark applications; rights (registered or unregistered and applications for same) in any design; copyright (including rights in computer software and topography rights); rights protecting confidential and proprietary knowledge and information; rights protecting goodwill and reputation; data base rights; and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world.

**“Project Plan”** means the timetable established for completion of the Project and/or portions thereof.

**“Services”** means all services provided for under this Contract including web hosting, maintenance and support services.

**“Specification”** means the request for proposal of the client, the proposal of the Company and any other features of functionality that the parties agree that the System, Software or Web Site should have.

**“Training”** means the training services agreed to be given by the Company to enable the client to utilise and adapt the Web Site as envisaged in the Specification.

**“Web Site”** means the internet web site commissioned by the client which the Software, System and Services are designed to implement and which is agreed to be maintained and hosted by the Company.

## **1 SUPPLY BY THE COMPANY**

1.1 In consideration of the payment by the Client of the fees and expenses to be charged by the Company in accordance with the Order Form (where completed), the Company shall:

(a) advise the Client as to the type and functionality of Web Site necessary to achieve the objectives of the Client as expressed in the Request For Proposal and shall advise the Client as to the capacity of server required and/or other matters relating to the technical requirements necessary to achieve the functionality for the Web Site envisaged in the Request For Proposal and the Proposal with all due skill, care and diligence to enable the Client to properly identify its needs in respect of the Web Site and its operation;

(b) provide the System, Services, Software, Training and other equipment, incidentals or deliverables necessary to complete the Project in accordance with the Specification and in compliance with the Project Plan;

(c) after completion of the Project, the Company shall proceed to provide support, maintenance updating and hosting services as specified in the Company’s Order Form (where completed) and the Specification.

## **2. PROJECT CONTROL AND PROGRESS**

2.1 The Company having nominated its Project Manager and Project Controller shall take all reasonable steps to have them available for the subsistence of the Contract.

- The Project Manager may not be working on the Project full time but he/she will be the most senior contact of the Company directly involved on the Project.
- The Project Controller will have responsibility for scheduling and assignment of work on the Project.

2.2 If it shall appear that the Project Manager and/or the Project Controller are not available for the subsistence of the Contract, then the Company will take such steps as it will consider necessary to nominate personnel of equal competence as replacements.

2.3 Immediately after accepting the Contract, the Client shall nominate two competent representatives from its staff to act as points of contact for the Company for the duration of the Contract

## **3. CONFIDENTIALITY**

3.1 The Company and the Client shall keep confidential any information (written or oral) relating to the business,

affairs, plans or products of the other party designated as 'confidential' or information obtained under or in connection with this Contract which ought reasonably to be regarded as confidential. Neither party shall divulge such information to any third party without the prior written consent of the other party.

3.2 The provisions of sub-clause 1 shall not apply to:

- (a) any information in the public domain which is in the public domain otherwise than as a result of breach of this Contract; or
- (b) information obtained from a third party who has the right to divulge it;
- (c) information which is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or of a competent regulatory authority.

3.3 Each party shall take all reasonable precautions to ensure that its employees are aware of and comply with the provisions of this clause.

3.4 The obligations of both parties as to disclosure and confidentiality shall continue in force notwithstanding the termination of this Contract.

#### 4. STANDARDS AND METHODS OF WORKING

4.1 Throughout the Contract and in all matters with the Project the Company's standards and methods of working and of producing and laying out documents shall be used save as may be agreed in writing.

4.2 Unless otherwise specified any software which is to be prepared by the Company shall be written in whichever language the Company shall at its discretion select.

4.3 Any amendments required by the Client to the Project, Services or Specification must be proposed and submitted to the Company in writing. The Company will then consider the same and if work, over and above that already envisaged in the Specification is entailed the Company will give a written quotation for the extra work required to the Client. If the quotation is accepted by the Client then the Contract will be amended to cover the same. If the quotation is not accepted, the Company will complete the Project and continue the supply of Services on the terms already agreed.

4.4 Any substitution or modification that the Company feels it appropriate to make in the Services supplied under this Contract must be proposed and submitted to the Client in writing and must be agreed by the Client, subject to any appropriate abatement in fees, and before being implemented by the Company.

#### 5. SITE HOSTING AND EMAIL

5.1 While the Company will use its best endeavours to design and maintain the Web Site and Server so that the integrity and security of the Server is safeguarded in so far as possible and in accordance with best industry practice, the Company does not guarantee that the Server will be free from unauthorised users or hackers and shall be under no liability for non-receipt or misrouting of email or for any other failure of email.

5.2 The Company makes no representation and gives no warranty as to the accuracy or quality of information sent by any person via the Server. The Client shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server.

5.3 The Client will not use the Virtual Server in any manner which the Client is aware will infringe any law or regulation or which will infringe the rights of any third party, nor will the Client knowingly authorise or permit any other person to do so;

5.4 The Client will not post, link to or transmit:

- (a) any material which to the knowledge of the Client is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;
- (b) any material which the Client knows to contain a virus or other hostile computer program;
- (c) any material which the Client knows constitutes, or encourages the commission of a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person or corporate body which may exist under the laws of any jurisdiction;

**NOTE:** Pornography and sex-related merchandising are **PROHIBITED** on any server.

**NOTE:** Spamming, or the sending of unsolicited email, from a server or using an email address that is maintained on a Company machine is **STRICTLY PROHIBITED**.

5.5 The Client shall keep secure any identification, password and other confidential information relating to the Server identified under the Contract and shall notify the Company immediately of any known or suspected unauthorised use of the aforesaid Server or breach of security, including loss, theft or unauthorised disclosure of any password or other security information;

5.6 The Company will use best endeavours to adhere to any dates set for the provision of Hosting Services, however any such date is to be treated as an estimate only and the Company accepts no liability for failure to meet such dates.

5.7 The Company will use best endeavours to provide a Hosting Service in accordance with best industry practice. Without prejudice to the Company's obligations under clauses 2 and 5 above the Company does not undertake to provide a Hosting Service that is free of all faults. In the event of a fault in Service, the Client may report the fault by telephone, telefax or electronic mail to the Company's Technical Support at the appropriate numbers or addresses or other such numbers or addresses that the Company may from time to time provide. Upon receipt

of the fault report, the Company will take all proper steps without undue delay to correct the fault. The Company shall not, in any event, be liable for interruptions of service or down-time of the Server.

5.8 The Company may:

- (a) temporarily suspend for the purpose of repair, maintenance or improvement, part or all of the Company's service generally without notice;
- (b) give or update instructions regarding the use of the Service which in the Company's reasonable opinion is necessary in the interests of safety, or to maintain or improve the quality of Service to the Clients and any such instructions whilst they are in force shall be deemed to form part of this Contract,
- (c) Generally without notice vary the technical specification of Service for operational reasons, the Company undertakes to use reasonable endeavours to restore Service as soon as practicable after any such suspension;

#### **COMMENCEMENT and MINIMUM PERIOD OF SERVICE**

The Service shall be for a minimum period as specified on the Order Form (where completed). The Service, unless otherwise agreed on the Order Form (where completed), and subject to termination pursuant to clause 17 or 18 shall be provided for a minimum period of twelve months. The minimum period shall commence upon connection. Connection shall be deemed to be effected when the link is first live to the Client's Web Site or other such point as requested by the Client, to the network;

#### **CHARGES**

You acknowledge that our Services are provided using facilities provided to us by third parties; The Company shall have the right, subject to 14 days prior written notice to you, to increase our Charges at any time during the minimum Contract term or the continuation of the Contract, whether to reflect increase costs to us from such third parties or otherwise. However, if such increase exceeds 10% of the Charge in question prior to such notice you shall be entitled to terminate this Contract by written notice to us given by you within 7 days after service of our notice of increase to you. If you do so terminate, you will remain liable for all Charges (at the previous rate) up to the date this Contract ends.

#### **BANDWIDTH UTILISATION**

If the bandwidth or speed of Service used by the Client exceeds agreed quotas in a one month minimum period an excess charge will be payable by the Client at current published prices unless the Company has agreed to upgrade the bandwidth to the next level.

### **6. SUPPORT & MAINTENANCE**

6.1 During the working day 0900 – 1730 hours Monday to Friday excluding Irish Bank and Public Holidays the Support desk is available within the Company to which the Client may report all requests for assistance. The Company will respond to the report of an alleged fault within four working hours of receiving the report and will keep the Client advised of progress in its resolution and the options open to the Client to remedy the fault or minimise the consequences of the fault.

6.2 If a call is received by the Company outside the period defined above, response will not occur until the next working day except by incurring additional charges agreed by both the Client and the Company.

6.3 The Client shall:

- (a) Co-operate with the Company's personnel in the diagnosis of the reasons for any malfunction of the System reported to the Support desk.
- (b) Be prepared to provide such information as may reasonably be required by the Company's personnel to assist with the diagnosis of a reported fault. This would normally include details of the procedures which were being carried out at the time the fault occurred, data files, error messages or print outs which contain examples of the fault.
- (c) Accept that it is a fundamental condition that no third party or person in the Client's organisation shall attempt to remedy any fault or in any way interfere with the System except under the specific instructions of the Company's personnel.

### **7. DELIVERY AND INSTALLATION OF SOFTWARE**

7.1 The Company shall use all reasonable endeavours to deliver the Software in machine readable form to the Installation Site and shall install the Software in accordance with the Project Plan. The Company shall make every effort to adhere to the Project Plan but all delivery times are approximate.

### **8. SOFTWARE UNDER LICENCE**

#### **8.1 Software**

8.1.1 The Company hereby grants to the Client a non-exclusive non-transferrable licence to use the Software effective from when the link is first live to the Client's Web Site or other such point as requested by the Client, to the network until terminated as provided below.

8.1.2 No rights of any kind whatsoever are hereby assigned, released or shall otherwise pass to the Client unless specifically agreed in writing with the Company

8.1.3 No work may be undertaken on the Client's System on behalf of any third party without the written approval of the Company.

#### **8.2 Software Title**

8.2.2 Title and copyright in the Software remain the exclusive property of the Company

## **9. ACCEPTANCE OF SOFTWARE**

9.1 The Company shall assist the Client in devising acceptance tests that will be sufficient to prove the functionality and operation of the Software and Web Site in accordance with the Specification by the date specified for the compilation of acceptance tests in the Project Plan.

9.2 Upon completion of the Company's obligations as set out in clause 2 above and the installation and implementation by the Company of the Project and Web Site, the Client shall run in the presence of designated personnel of the Company and suitably qualified personnel of the Client and an independent consultant (if required by the Client and acceptable to the Company) acceptance tests sufficient to prove the operation of the Web Site to the Client's satisfaction.

9.3 The Client shall accept the Software and the System on the date that it passes the said acceptance tests and if, in such circumstances, the Client shall not have accepted the Software and the System within a period of 30 days after completion of the acceptance tests, the Client shall be deemed to have accepted the System, Software and the Web Site.

9.4 If the System, Software or Web Site or any part thereof fails the said acceptance tests (disregarding any minor and inconsequential failures) the Client shall notify the Company in writing of any material differences arising, then the Company shall forthwith rectify free of charge such defects in the System, Software or Web Site as appropriate as it shall in the circumstances reasonably judge necessary and in sufficient time to make possible the repetition of the acceptance tests within ten business days of the date of failure (or such other date as the parties may agree) (be "first repeat acceptance tests"). When the Company has corrected such differences and notified the Client accordingly, the Client shall accept the Software, the System and the Web Site or if, within 30 days after receipt of such notification, the Client shall not have accepted the Software, the System and the Web Site, the Client shall be deemed to have accepted the Software.

9.5 If the System, Software, Web Site or any part thereof fails the first repeat acceptance tests then the Client may at its option:

(a) require the Company by written notice to forthwith rectify free of charge such defects in System, Software or Web Site as the Company shall reasonably judge necessary to enable the System, Software or Web Site to pass repeat acceptance tests ("second repeat acceptance tests"). The second repeat acceptance tests shall be carried out within ten business days of the date of failure (or such later date as the parties may agree). If the System, Software or Web Site shall fail the second repeat acceptance tests then the Client shall be entitled at its option to proceed under clause 9.5(b) below;

(b) fix a new date for carrying further repeat acceptance tests on the same terms and conditions as the second repeat acceptance tests;

9.6 In the event that the Client shall use the System, the Software or the Web Site for the purposes other than acceptance testing prior to completion of the acceptance testing, the System, Software and the Web Site will be deemed to have been accepted by the Client.

9.7 If the Client shall delay unduly in providing acceptance tests specifications or any of them or if they or any of them are not acceptable to the Company for good reasons, or if the Client shall supply an insufficient number of suitably qualified personnel to check the results of the acceptance tests, the Client shall be deemed to have accepted the System, Software and the Web Site on the 40<sup>th</sup> day after acceptance testing would have begun.

9.8 If the acceptance testing or any part of the Software, the System or the Web Site shall be satisfactorily completed in advance of the remainder, nothing in this clause shall preclude the Client accepting the System, Software and the Web Site in respect of that part.

9.9 The parties hereby agree to provide each other with all such assistance and advice as is reasonable in connection with the tests carried out pursuant to this clause 9 with a view to ensuring that the Systems, Software and Web Site pass the acceptance tests.

9.10 For the avoidance of doubt, references in this clause 9 to "minor and inconsequential failures" shall be to failures which in no way inhibit the normal expectations of the System, Software or Web Site.

## **10 DOCUMENTATION**

The Company shall supply to the Client the documentation specified in the Specification upon delivery and installation of the System, Software and Web Site

## **11 SUBSTITUTIONS/MODIFICATIONS**

The Company reserves the right to make substitutions and modifications in the services offered provided that such substitutions and modifications do not materially affect the performance of the Contract or cost thereof.

## **12 WARRANTIES**

The Company agrees to remedy free of charge any defects arising in the System, Software or Web Site for a period of 30 days from the date of acceptance by the Client.

## **13 ESCROW**

Should the Client desire, within seven days of the date of acceptance of the System, Software and Web Site, the Company shall ensure that the compiled code of the Software and all relevant documentation relating to the Software is placed in Escrow subject to the terms of the standard Escrow Agreement of an agreed institution between the Client and the Company. In the event of liquidation or insolvency of the Company and their not having made satisfactory arrangements with another third party for the support and maintenance of the Software involved, the Client shall have the right of access to the compiled code without further payment other

than the cost of reproducing the same.

#### **14. COPYRIGHT POLICY**

14.1 All ideas, knowledge, concepts or techniques relating to the Web Site, Server or Software developed by the Company's staff prior to or during the Project or the provision of the Services, and proposed or employed for the purposes of the Project or the Services may be used by the Client as envisaged by the Project.

14.2 With the exception of material referred to or dealt with in sub clauses 14.3 and 14.4, the copyright and all documentation written by the Company under the Contract including software specifications, flow charts, listings and support documentation is vested in the Company unless otherwise specified in writing.

14.3 The copyright and all Intellectual Property in images, text and other material supplied by the Client remain the property of the Client or the original supplier of such material.

14.4 The copyright and any other Intellectual Property subsisting in the design of or artwork or other materials commissioned by the Client from the Company under this Contract (excluding the underlying Software) shall be the property of the Client and the Company hereby assigns the said copyright and other Intellectual Property in the said material to the client.

#### **15 VARIATIONS**

15.1 The Client may at any time during the Project require the Company to revise the timing and sequence of events agreed and/or to undertake any alterations, additions or omission from the Project or any part thereof (hereinafter referred to as a 'Variation'). In the event of such a variation being required, the Client shall request the Company to state the effect such variation will have on the Project and what adjustment will be required on the contract price. The Company shall not vary the Project in any respect unless agreed by the Client.

15.2 A variation under this clause shall not invalidate the contract but if such variation involves an alteration of the cost to the Company of carrying out the Project an appropriate adjustment to the contract price, which may consist in either an abatement of, or increase in, the contract price shall be agreed between the parties.

#### **16 COSTS & TERMS OF PAYMENT**

16.1 A deposit of 50% of estimated Contract Price is payable to the Company as indicated on the Order Form (where completed) for web sites and must be paid on issue of invoice.

16.2 The balance (final 50%) will be due when the web site has been up loaded to the host Server.

16.3 For some projects a periodic payment plan may be created.

16.4 All invoices must be paid on issue of invoice.

16.5 All prices are quoted net excluding Value Added Tax or any other Government levies prevailing at the date of invoice.

16.6 A private Internet Address (URL) will be set up for viewing of the site as it is being created.

16.7 Fees relating to domain registration and ISP accounts will be deemed payable when the accounts are set up.

16.8 Revisions and updates to the web site will be billed at an agreed hourly rate, in increments of 30 minutes between the Client and the Company.

16.9 No dispute arising under the Contract, nor delays beyond the control of the Company shall interfere with prompt payment by the Client.

16.10 In the event of default in payment by the Client in accordance with the agreed terms for any reason other than an apparent or threatened breach of the Contract by the Company, the Company shall be entitled, without prejudice to other rights or remedies, to suspend the ongoing work in hand and to remove the site from the private URL or from the Clients URL.

16.11 Any work that has to be sent to an outside sub contractor (for high resolution scanning, print proofs etc.) not specified at the time of order will be charged at cost plus 15%.

16.12 The design costs will include all scanned images as specified at the outset and unlimited lines of Client supplied text, copy typed and provided on disk by the Client.

16.13 Custom designed company logos can be supplied under a separate Contract. Such logos will be supplied to the Client on disk in a JPEG format & will include transfer of the copyright to the Client.

All quotations are made and all orders accepted subject to the following conditions.

16.14 All conditions of the Client or other conditions whatsoever are excluded from the contract and any variation thereof, unless expressly accepted by the Company in writing.

16.15 Quotations are only to be valid for a maximum period of 30 days from the date thereof and may be withdrawn by the Company within such period or at any time without notice unless the Client has made an order on the basis of the quote within or on the 30 day time period.

16.16 Subject to the provisions of this Agreement all work remains the property of the Company unless expressly agreed otherwise in writing.

16.17 Trading terms are based on payment on issue of invoice.

16.18 It is the Clients responsibility to provide the Company with all text and images on disk or electronic format.

16.19 The Client must view the site and give their approval before the site is changed from the private URL to the Clients URL.

In the event of non-payment by the Client of the Contract Price in the manner agreed for any reason other than an apparent or threatened breach of the Contract by the Company, the Company reserves the right:

(a) To terminate the licences for the Client's use of all Software provided under the Contract unless the default is corrected within thirty days of notice to the Client of the said default.

#### **17 TERMINATION OF PROJECT**

17.1 This Contract may be terminated forthwith by either party on written notice if the other party is in material breach of the terms of the Contract and, in the event of a breach capable of being remedied, fails to remedy the breach within 30 days of receipt of notice thereof in writing.

17.2 Either party may terminate this Contract forthwith on written notice if a receiver, examiner or administrator is appointed over the whole or any part of the other party's assets or the other party is struck off the register of

companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for winding up the other party (unless such order or resolution is part of a voluntary scheme for reconstruction or amalgamation of the party as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound by this Contract).

17.3 Termination of this Contract shall not prejudice any rights of either party which may have arisen on or before the date of termination.

17.4 Within seven days following the date of termination by the Company and in accordance with the provisions of sub clause 1 or 2 of this clause, the Client shall at the option of the Company return or destroy all copies, forms and parts of the Software and Documentation which are covered by this Contract and shall certify to the Company in writing that this has been done.

17.5 For the avoidance of doubt the provisions of clause 8.3 of this Contract shall survive any termination of this Contract by the Client in accordance with the provisions of sub clauses 1 or 2 of this clause.

#### **18 TERMINATION OF SUPPORT AND MAINTENANCE AND WEB HOSTING SERVICES**

18.1 Once the Project has been completed, the maintenance support and web hosting services provided by the Company under this Contract may, in addition to the grounds provided for in clause 17, be terminated by either party on giving at least 30 days notice to the other party. If the Company gives notice, the Client shall pay all charges up to the expiry of the notice. If the Client gives notice for any reason other than breach of the Contract by the company, the Client shall pay all charges until 30 days after the date of the Company receives the notice or until the expiry of the notice, whichever is the later.

18.2 For the avoidance of doubt the provisions of clause 8.3 of this Contract shall survive any termination of the support, maintenance or web hosting services by either party in accordance with sub clause 1 of this clause.

18.3 Whilst every care is taken with material entrusted to the Company for provision of Contractual Services, it is recommended that the Client provides the Company with copies of all relevant materials as the Company shall take no responsibility for any damage or loss of such data.

18.4 The use of a courier / postal service is of the Client's choice and the Company takes no responsibility for property during transit. Any such transport and or insurance requested by the Client will be charged for at cost plus 15%.

#### **19 FORCE MAJEURE**

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances beyond the party's control. If as a result of the force majeure, the performance by the affected party is only partially affected, the affected party shall remain liable to the performance of those obligations not affected by force majeure. Upon other cessation of the force majeure, the affected party shall perform its obligations under the Contract.

#### **20 LIABILITY**

20.1 The Client acknowledges that the Company has no control over the information transmitted via the Service and that the Company does not examine the use to which you put the service or the nature of the information you are sending or receiving. The Company hereby excludes all liability of any kind for the transmission or reception of information of whatever nature;

20.2 The Company undertakes no liability whatsoever for the acts or omissions of other providers of telecommunication service or for faults in or failures of their apparatus;

20.3 The Company is not in any way liable in Contract or otherwise for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.

20.4 The Company makes no warranty as regards to its services or equipment and will not be responsible for any damage allegedly suffered or claimed by you for any reason including but not limited to loss of data, wrong or non deliveries and service interruptions.

20.5 All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded;

20.6 Our total aggregate liability to the Client for any claim in Contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited one and half times the sums paid by the Client under this Contract, in respect of the Services which are the subject of any such claim;

21.7 In any event no claim shall be brought unless the Client has notified the Company of the claim within one year of it arising;

#### **21 INDEMNITY**

The Client shall indemnify the Company and keep the Company indemnified and hold the Company harmless from and against any breach by the Client of these terms of business and any claim brought against the Company by a third party resulting from the provision of Services by the Company to the Client and the Client's use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by the Company in consequences of the Client's breach or non-observance of this Agreement.

#### **22. UNENFORCEABILITY**

If any term or provision of the contract shall be held to be illegal, or unenforceable under any enactment or rule of law, such term or provision shall to that extent be deemed not to form part of the Contract and the validity and enforceability of the remainder of the Contract shall not be affected thereby.

#### **23 WAIVER**

No relaxation, forbearance or indulgence by either party in enforcing any of the terms and conditions of the Contract or granting of time by either party to the other shall prejudice or restrict the rights and powers of the Company hereunder nor shall any waiver of any breach operate as a waiver of any subsequent or continuing

breach.

**24 LAW**

Unless otherwise agreed in writing the Contract shall be constructed and interpreted according to the laws of Ireland and in the event of a dispute arising under the Contract, the Client agrees to submit to the jurisdiction of the Republic of Ireland.

**25 ASSIGNMENT**

The Company reserves the right to assign all or part of this Contract at any time to any subsidiary or associate company of The Company.

These Terms & Conditions constitute the full and complete understanding and agreement of the Client and the Company , relating to the subject matter hereof, and supersedes all prior understandings, agreements, representations and warranties relating to such subject matter. Any waiver, modification, or amendment of any provision of this Terms & Conditions, initiated by the Client, will be effective only if accepted in writing and signed by the Company.

Domain Name: \_\_\_\_\_

Date: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Name: \_\_\_\_\_