



# FAB HOSTING GENERAL TERMS AND CONDITIONS

## DEFINITIONS

The Provider: the legal entity defined in the 'Provider' section of the Master Schedule.

The Customer: the legal entity defined in the 'Customer' section of the Master Schedule.

The Fees: the amount defined in the 'Fees' section of the Master Schedule.

The Service: the Website Hosting Services defined in the 'Services' section of the Master Schedule.

## 1. PROVISION OF SERVICE

- a. In consideration of the payment by the Customer of the Fees, the Provider shall provide the Service during the continuance of this Agreement subject to the compliance by the Customer with all the terms and obligations set out in this Agreement.
- b. The services and facilities comprised in the Service may be altered by agreement in writing between the Provider and the Customer and any application or request made by the Customer to the Provider for any change in the Service must be made in writing or digitally signed electronic mail.

## 2. TERM OF AGREEMENT

- a. The term of this Agreement shall commence on the Commencement Date and continue for the Term set out in the Master Schedule and shall continue thereafter from year to year unless and until terminated by either party in accordance with the terms of this Agreement.

## 3. TERMINATION AND SUSPENSION OF SERVICE

- a. If the Customer:
  - i. fails to pay any Fees or related charges;
  - ii. shall cease to carry on business or become insolvent, or have an administrator or receiver appointed or enter into liquidation or enter into any agreement with its creditors;
  - iii. fails to fulfil any of its obligations under any part of this or any other agreement that it has with the Provider or interferes with or impairs the Service, or the Provider's ability to perform the Services;
- b. Then the Provider may (without prejudice to any other right or remedy):
  - i. suspend provision of the Service until the Customer shall remedy such matter but the Customer shall continue to be liable for any of the charges and Fees which may accrue during such suspension; and/or
  - ii. after giving written notice, terminate the Agreement between the Customer and the Provider forthwith in which case any unused portion of the Fee will not be returned;
  - iii. The Provider may terminate the Customer's access to the whole or any part of its Services at any time by providing not less than the Appropriate Written Notice Period and returning the unused portion of the Fees.

## 4. PROVIDER'S RIGHTS AND OBLIGATIONS

- a. The Provider shall give instructions about use of the Service which the Provider thinks reasonable to be necessary in the interests of safety, or of concern to the quality of service to the Provider's other customers and any such instructions shall, whilst they are in force, be deemed to form part of this Agreement.
- b. Subject as set out in Clause 4.b.1 the Provider shall provide the Service on a 24 hour per day basis, 7 days a week but -
  - i. access to the Service may be occasionally restricted to allow repairs, maintenance and archiving in which case the Provider will use all reasonable endeavours to provide the Customer with advance notice of such restriction;
- c. The Provider shall have the right to examine the use(s) to which the Service is put by the Customer and to disclose such use to third parties for legal or statutory purposes, in order to identify misuse or abuse of the Internet, or to ensure the smooth running of and identify faults in its network and the rest of the Internet;

## 5. CUSTOMER'S OBLIGATIONS

- a. The Customer shall at all times use the Service in accordance with the Provider's instruction and shall indemnify and hold harmless the Provider from any losses incurred by reason of breach of this clause. In particular the Customer shall not, nor permit any other person to, use the Service:
  - i. to send or receive any material which is abusive, indecent, obscene, defamatory, racist, offensive, menacing or in breach of confidence, copyright or any other rights or which contains unlawful security devices or which contravenes any laws;
  - ii. to cause annoyance, inconvenience or needless anxiety;
  - iii. other than in accordance with the acceptable use policies of any connected networks including the Internet;
  - iv. to send unsolicited advertising or mailshots of any kind.
- b. Unless otherwise specified in the Master Schedule the Customer is responsible for backup of its own files and the Provider does not offer recovery facilities as a service to the Customer.
- c. This agreement is personal to the Customer and accordingly the Customer may not assign, transfer or "sub-let" its rights under this Agreement or any part of the Service itself without the prior written consent of the Provider.
- d. In the event that the Provider as part of the Service provides software, the Provider hereby grants a personal, non-exclusive licence for the term of this Agreement to the Customer to use such software solely for the receipt of the Services under this Agreement.
- e. Unless otherwise agreed in writing between the parties, the Customer is solely responsible for its own and any third party software, programs and data, the maintenance of the same and the output there from and for ensuring that such items are (if applicable) properly licensed, including being licensed for use by the Provider if necessary.

## 6. CHARGES FOR THE SERVICE

- a. The Customer shall pay to the Provider Fees relating to the Service on the basis specified in the Master Schedule.
- b. The Fees are not refundable, except where otherwise stated herein. This includes fees paid in advance at a discounted rate.
- c. Fees are exclusive of value added tax, which shall be paid by the Customer unless otherwise stated.
- d. Additional charges may be made at the Provider's current standard consultancy rates for advanced support, custom programming or configuration, or software installation.
- e. The Provider may at its discretion charge interest on any amounts due from the Customer under this Agreement which are not paid within 30 days of invoice at the rate of 19.9% for the time being calculated from the date of the invoice to the date actual payment is received.
- f. Cheques and direct debits returned unpaid by the Customer's bank may incur an administration charge, which in any event shall be paid by the Customer.
- g. In no event shall the Provider incur liability for Service Outage unless a written claim is made within 30 days of the Service Outage giving rise to such credit and in any event such Service Outage credit shall not exceed the corresponding monthly Fee (calculated as a percentage of any quarterly or annual contract) for the period of the Outage, and shall only be due from the period starting when the Customer contacted the Provider to alert them to the problem.
- h. The Provider reserves the right to require the Customer to enhance or upgrade their bandwidth or level of service or associated cover in the event that the Service herein become inappropriate or insufficient to meet the Customer's existing or future growth requirements and which in the opinion of the Provider requires a different service more appropriate to the Customer's usage pattern or needs. The Customer will be liable for the higher charges and costs associated with the upgraded service.

## 7. LIMITATION OF LIABILITY

- a. The Customer acknowledges that:
  - i. The Provider has no control over the information transmitted to or from the Service and that the Provider does not ordinarily examine the use to which customers put the Service or the nature of the information they are sending or receiving. the Provider hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.
  - ii. The Provider shall not in any circumstances be liable under this Agreement or otherwise for any direct or indirect loss, loss of business, revenue, profits or savings; wasted expenditure; corruption or destruction of data; or for any indirect or consequential loss whatever whether arising from negligence, breach of contract or otherwise.
  - iii. In any event the Provider's liability in contract, tort or otherwise (including negligence) howsoever arising out of or in connection with this Agreement shall in respect of any one or more incidents not exceed the total Fees received by the Provider in the calendar year in which the incident occurs
  - iv. In the event of any part of this Agreement being held inapplicable or unreasonable, the remainder of the Agreement shall remain in full force and any clause held inapplicable or unreasonable shall be enforced to the fullest extent possible.
  - v. The Customer shall indemnify the Provider against any claims, legal proceeding and expenses (including legal fees), arising from the Customer's use of the Service that are brought or threatened against the Provider by another person or company.

- vi. Any written document shall be deemed to be given or served by the Provider on the day following that on which it is emailed to the Customer's Internet electronic mail account, or posted to, or left at, the address given by the Customer for receiving bills.

**8. FORCE MAJEURE**

- a. Neither the Provider nor the Customer shall be liable for any breach of this Agreement caused or substantially contributed to by Force Majeure.

**9. LAW**

- a. These General Terms and Conditions are subject to the laws of England
- b. The Customer acknowledges that, in entering into this Agreement, it does not rely on any representation (other than any fraudulent misrepresentation), warranty or other provision except as expressly provided in this Agreement, and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- c. The Customer hereby agrees that the Provider may refer to the Customer, by company or trading name, and to the existence of this Agreement in any marketing or promotional materials.

**10. YEAR 2000 & EURO**

- a. The Provider gives no warranty or representation that the Service or any aspect of it is year 2000 compliant or Euro ready.

**11. CHANGE OF HOSTING TERMS AND CONDITIONS**

- a. The Provider may modify the Agreement where it is required to do so, by notifying the Customer in writing and giving 30 days notice where possible. This would include, but not be limited to, where changes to the law, rules applied by Internet authorities and collaborative Internet bodies require the Provider to modify its procedures, policies or services.