



WEBFOLD COMMUNICATIONS LIMITED

TERMS AND CONDITIONS FOR THE PROVISION OF SERVICE

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms, unless the context otherwise requires, the following words shall have the following meanings:

“Agreement”	the agreement made on the basis of an Order Form signed by the Customer and accepted by WEBFOLD incorporating these Terms;
“Charges”	the charges for the Service as set out in the Order Form;
“Commission”	the payments due from WEBFOLD to the Customer set out in and calculated in accordance with the Order Form;
“Customer”	the customer named on the Invoice Form;
“Effective Date”	the date of commencement of provision of the Service set out on the Invoice Form;
“Intellectual Property Rights”	any patent, copyright, assignment, trade mark, database right, know-how, or other industrial or intellectual property subsisting in any country (including but not limited to the United Kingdom) in all cases whether or not registered or registerable in any country, for the full term of such rights and including registrations and applications for registration of any of these and rights to apply for the same and all rights and forms of protection of a similar nature of having equivalent or similar effect to any of these anywhere in the world;
“WEBFOLD”	Webfold Communications Limited (company number 4613601) whose registered office is Little Paddock, Plaistow Road, Ifold, West Sussex, RH14 0TU
“WEBFOLD’s Website”	any of WEBFOLD’s Internet websites and which the Customer is authorised to access as part of the Service;
“Minimum Period of Service”	Shall be 6 months from the date shown on the Invoice Form
“Invoice Form”	the order form incorporating these Terms stating the Customer’s requirement for Service;
“Passwords”	any codes or passwords notified by WEBFOLD to the Customer and for use by the Customer to access the Service;

“Planned Outage Time”	the length of time (in minutes) when a particular service is not available for use by the Customer in order for WEBFOLD to perform certain tasks including, but not limited to, routine maintenance, testing, changing configurations, software upgrades, updating facilities;
“Service”	the service to be provided to the Customer by WEBFOLD set out on the Order Form;
“Service Target”	the performance levels specified on the Order Form and excluding any Planned Outage Time;
“Working Day”	Monday to Friday excluding Public and Bank Holidays in the UK; and
“Working Hours”	the hours specified in the Invoice Form or, in the absence of such specification, 0900 – 1730 London time in a Working Day.

- 1.2 References to clauses are to clauses of these Terms; headings are for convenience only and shall be ignored in interpreting the Agreement; the singular includes the plural and vice versa, and use of any gender includes them all; and any reference to a statute, statutory provision or subordinate legislation (“legislation”) shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation.
- 1.3 These Terms when incorporated into an Order Form are the only basis on which WEBFOLD will contract with Customers and operate to the exclusion of all other terms whether brought to WEBFOLD’s attention or not.
- 1.4 Without prejudice to the making of the Agreement or clause 1.3, acceptance of provision of the Service or payment of Commission by the Customer constitutes acceptance of these Terms.

2. **PROVISION OF THE SERVICE**

- 2.1 In consideration of the Charges WEBFOLD agrees to provide the Customer with the Service in accordance with the provisions of the Agreement.
- 2.2 For operational reasons WEBFOLD may vary the technical specification of and make operational changes to the Service and the Passwords.
- 2.3 WEBFOLD will use its reasonable endeavours to provide the Service during Working Hours and shall use its reasonable endeavours to meet the Service Target.
- 2.4 WEBFOLD cannot guarantee continuous uninterrupted provision of the Service. WEBFOLD reserves the right to interrupt the Service to carry out routine maintenance, repairs, reconfigurations or upgrades or for other circumstances beyond its reasonable control. It is technically impracticable to provide a fault free Service and WEBFOLD does not undertake to do so and shall not be liable for its failure to provide continuous Service or any failure to meet the Service Target.
- 2.5 WEBFOLD reserves the right to control direct and establish technical procedures for the use of the Service and the Customer agrees to follow the reasonable instructions and procedures of WEBFOLD with respect to the same.

2.6 The Service are provided subject to the condition that there will be no abuse or fraudulent use thereof. Abuse and fraudulent use of Service shall include (without limitation):

2.6.1 obtaining, or attempting to obtain, the Service by rearranging, tampering with, or making connection with any facilities of WEBFOLD, or by any trick, scheme, false representation or false credit device, or by or through any other fraudulent means or devices whatsoever, with intent to avoid payment, in whole or in part, of the regular charges for the Service;

2.6.2 attempting to, or actually obtaining, accessing, altering, or destroying the data files, programs, procedures and/or information of WEBFOLD; or

2.6.3 assisting another to perform the acts prohibited in sub-clause 2.6.1 or sub-clause 2.6.2 above.

2.7 The Customer acknowledges that neither the Internet nor the telecommunications network used in the provision of the Service is secure and accordingly WEBFOLD cannot guarantee the privacy of any of the Customer's information.

3. COMMENCEMENT AND DURATION

The Agreement will commence on the Effective Date and will, subject to its terms, continue for the Minimum Period of Service, after which it will continue unless terminated in accordance with clause 18.

4. WEBFOLD'S GENERAL POWERS

WEBFOLD shall be entitled, upon the giving of as much notice to the Customer as reasonably possible, to:

4.1 change any code or phone number allocated to the Customer if required to do so by a licensed telecommunications provider;

4.2 change or vary the technical specification of the Service if a licensed telecommunications provider or WEBFOLD needs to do this for operational reasons;

4.3 interrupt the Service if a licensed telecommunications provider or WEBFOLD needs to do this for operational reasons or because of an emergency; or

4.4 give the Customer instructions which a licensed telecommunications provider or WEBFOLD believes are necessary for reasons of health, safety, or the quality of Service to the Customer or to any other customer.

5. CUSTOMER'S UNDERTAKINGS

The Customer undertakes for itself and for any other party using its access to the Service:

5.1 not to create and/or introduce into the Service and in particular WEBFOLD's Website any virus, worm, trojan horse, cancelbot or other destructive or contaminating program or advise or instruct any other party how to do the same; and

5.2 to maintain confidentiality of its login names, passwords and other confidential information relating to the Customer's access to the Service.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights arising in the provision of the Service shall vest in WEBFOLD.
- 6.2 WEBFOLD warrants that it is entitled to and to grant rights of use in the Intellectual Property Rights subsisting in the Service ("**Service IPR**") as beneficial owner or licensee (as the case may be) and the Customer acknowledges that all title to the Service IPR is and shall remain with WEBFOLD or WEBFOLD's licensor (as the case may be).
- 6.3 WEBFOLD grants the Customer a non-exclusive, non-transferable licence to use the Service IPR for the purpose of using the Service and for no other purpose. Any Service IPR supplied to the Customer must not be copied, disclosed or used (except for the purpose for which they are supplied) without WEBFOLD's prior written consent. Such license shall expire upon termination or expiry of the Agreement howsoever occurring.
- 6.4 The Customer must keep the Service IPR in strict confidence. Any disclosure of it by the Customer is to be made in confidence and only to the extent strictly necessary for the proper use of the Service.

7. CONFIDENTIALITY

- 7.1 Subject to clauses 7.2, 7.3 and 7.4 below neither party shall without the prior consent of the other party, disclose to any third party any confidential information of the other party disclosed in relation to the Agreement, and which is confidential by its nature.
- 7.2 These obligations will not apply to information which is already in or comes into the public domain other than through a breach of the Agreement; is already known to the party concerned at the date of its receipt or is independently developed, generated or discovered by the party concerned without reference to the confidential information disclosed under this Contract; is lawfully obtained from a third party; or is legally required to be disclosed.
- 7.3 The obligations in this clause 7 will survive the termination or expiry of the Agreement.
- 7.4 Nothing in this clause 7 will prevent the use or disclosure by WEBFOLD of any information as may be necessary for the purposes of providing the Service.

8. MISUSE

- 8.1 The Customer warrants that the Service must not be used:
 - 8.1.1 to send a message or communication which is offensive, indecent, menacing, a nuisance or a hoax;
 - 8.1.2 fraudulently or in connection with the carrying on of a criminal offence; or
 - 8.1.3 in breach of instructions WEBFOLD has given including in accordance with clause 4.4.

and in this clause 8.1 any use or access of the Service utilising any of the Passwords shall be deemed to have been authorised by the Customer.

- 8.2 If WEBFOLD suspends Service for contravention of clause 8.1 it can refuse to restore Service until it receives an acceptable assurance from the Customer that there will be no further contravention.

9. INDEMNITY

- 9.1 The Customer undertakes fully and effectively to indemnify and keep indemnified at all times WEBFOLD against all actions, proceedings, costs, claims, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred or paid by WEBFOLD directly or indirectly in respect of:
- 9.1.1 access to and/or use of the Service by the Customer or by any person authorised by the Customer;
 - 9.1.2 any information, data or material produced, transmitted or downloaded by the Customer or by any person authorised by the Customer; and
 - 9.1.3 any breach by the Customer or by any person authorised by the Customer of any of the provisions of the Agreement or of any law, code or regulation relating thereto, to the Service or the Customer.

10. CHARGES AND PAYMENT

- 10.1 The Customer shall pay the Charges from the Effective Date on a monthly basis and within 14 days of the date of WEBFOLD's invoice in respect of Charges (the last day of such period "the Due Date").
- 10.2 The Customer will pay or reimburse WEBFOLD for any and all sales and use taxes, duties or levies imposed by any government authority, or government agency (other than the property taxes and taxes levied on WEBFOLD's net income) in connection with the Service.
- 10.3 The Customer agrees to pay all charges for maintenance and other Service activities, and to pay for loss or damage to the Service or any of WEBFOLD's equipment or software caused by:
- 10.3.1 use of the Service for purposes other than that for which they are specified;
 - 10.3.2 tampering with or attempting to adjust the Service, including (without limitation) WEBFOLD's Website; or
 - 10.3.3 Customer negligence of any kind.
- 10.4 The Customer agrees that it is solely responsible for all use of the Service accessed through the Passwords with or without its consent and will pay for and be responsible for such use.
- 10.5 In consideration of the obligations undertaken by the Customer hereunder WEBFOLD shall, on a monthly basis and in accordance with this clause 10, pay Commission to the Customer.
- 10.6 The parties agree that Commission is payable in respect of the Customer's procuring use of the Service by third parties to the commercial benefit of WEBFOLD and the Customer, that the Customer has no authority to negotiate sales of goods on behalf of WEBFOLD, and that accordingly, the provisions of the Commercial Agents (Council Directive) Regulations 1993 and Council Directive 86/653/EEC on the co-ordination of

the laws of Member States relating to self-employed commercial agents do not apply to the Customer.

- 10.7 The Customer hereby confirms its consent to self-billing.
- 10.8 Subject to the Customer being duly registered for VAT and the appropriate VAT Commissioner having approved self-billing, the parties agree that for any payments due from WEBFOLD to the Customer under the Agreement, WEBFOLD may issue to itself a VAT invoice, on the Customer's behalf and using the Customer's VAT registration number. The Customer further confirms that where such self-billing occurs the Customer shall not issue any invoice (whether relating to VAT or otherwise) in respect of any amounts due from WEBFOLD to the Customer under the Agreement
- 10.9 WEBFOLD shall within 35 days after the end of each month send to the Customer a copy of the Customer's VAT invoice issued by WEBFOLD in accordance with clause 10.8 showing the Commission which is due to be paid to the Customer for the said month together with a statement of account of the Customer with WEBFOLD and WEBFOLD's invoice in respect of Charges. Where such statement shows an amount owing
 - 10.9.1 from WEBFOLD to the Customer, WEBFOLD shall pay such amount to the Customer forthwith; or
 - 10.9.2 from the Customer to WEBFOLD, the Customer shall pay such amount to WEBFOLD by the relevant Due Date.
- 10.10 WEBFOLD shall be entitled to charge interest on any payments which remain unpaid on the Due Date which shall accrue on a daily basis at 3% above the base rate of Barclays Bank plc.
- 10.11 Upon termination of the Agreement by WEBFOLD serving notice on the Customer under clause 18.1 the Customer shall be entitled to Commission in accordance with clauses 10.5 and 10.9 for 90 days following such termination. For the avoidance of doubt after that period the Customer shall not be entitled to any further commission payments from WEBFOLD.
- 10.12 Where WEBFOLD does not receive payment in respect of the Service or is obliged to make a refund, then WEBFOLD may deduct Commission already paid from subsequent Commission payments to the Customer, or on termination, require repayment thereof by the Customer, save such payments were made as a result of WEBFOLD's supply of defective Service.
- 10.13 All sums payable under the Agreement are exclusive of any VAT or other applicable sales tax which shall where appropriate be added to the sum in question.
- 10.14 Unless otherwise agreed the currency of payment of Commission shall be the same currency as the currency of payment by the Service provider to WEBFOLD and payments by WEBFOLD to the Customer under the Agreement shall subject to the granting of any necessary exchange control or other governmental permission be made by cheque sent to the Customer's address as stated in the Order Form or as notified by the Customer to WEBFOLD from time to time.
- 10.15 If any dispute arises as to the amount of Commission payable by WEBFOLD to the Customer, the same shall be referred to WEBFOLD's auditors for settlement and their certificate shall be final and binding on both parties.

10.16 WEBFOLD shall be entitled to set off any sums owed to it by the Customer against any payment due to the Customer or any third party under the Agreement.

11. **WEBFOLD'S LIABILITY**

11.1 WEBFOLD in performing its obligations under the Agreement shall exercise the reasonable skill and care of a competent telecommunications service provider.

11.2 The Customer shall accept the Service "as is" and "as available" without any warranty of any kind either express or implied, including but not limited to warranties of merchantability, fitness for purpose, title or non-infringement.

11.3 Subject to clause 11.5 the parties agree that WEBFOLD shall not be liable under or in relation to the Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any:

11.3.1 loss of profits, sales or turnover; loss of or damage to reputation; loss of contracts; loss of customers; loss of, or loss of use of, any software or data; loss of use of any computer or other equipment or plant; wasted management or other staff time; losses or liabilities under or in relation to any other contract; or

11.3.2 indirect, consequential or special loss or damage

and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

11.4 Subject to clause 11.5 in no event shall WEBFOLD's liability to the Customer in contract, tort (including negligence) or otherwise under or in connection with the Agreement in aggregate for all events in any 12 month period exceed the amount of Charges payable in the same period.

11.5 Nothing in the Agreement shall operate to limit or exclude the liability of either party in respect of fraud; the death of, or personal injury to, any person caused by negligence; under section 12 of the Sale of Goods Act 1979; under section 2 of the Supply of Goods and Services Act 1982; under Part 1 of the Consumer Protection Act 1987; or any breach of clause 7.2.

12. **FORCE MAJEURE**

WEBFOLD will not be responsible for any delay in, or failure of, the Service due to any occurrence commonly known as force majeure, including but not limited to war, riots, embargoes, strikes, or other concerted acts of workmen (whether of WEBFOLD or others), casualties or accidents, or any other causes, circumstances, or contingencies, beyond WEBFOLD's control, which prevent or hinder the performance of WEBFOLD of any of its obligations hereunder.

13. **CHANGE CONTROL**

13.1 Either party may without invalidating the Agreement request a material addition to or omission from or other change in the Service including the period or the Working Hours in which the Service are to be provided by issuing to the other party a Service amendment form ("a Form").

13.2 On receipt by WEBFOLD of a Form from the Customer WEBFOLD shall provide the Customer within 10 Working Days, details of the:-

- 13.2.1 increase or reduction in the Charges (if any) which would occur as a result of the change set out in the Form; and
- 13.2.2 if such change cannot reasonably be implemented immediately, the time in which it reasonably requires to implement such change.
- 13.3 WEBFOLD shall provide to the Customer details in respect of the matters set out in Clauses 13.2.1 and 13.2.2 at the same time as it issues to the Customer any Form.
- 13.4 If the Customer wishes to proceed with a proposed change it shall arrange for the Form to be signed by an authorised representative of each party with the details provided by WEBFOLD in accordance with Clauses 13.2.1 and 13.2.2. WEBFOLD shall then implement the proposed change in accordance with the details provided by it under Clauses 13.2.1 and 13.2.2.

14. MODIFICATION OF FEATURES AND FACILITIES

- 14.1 WEBFOLD can terminate any feature or facility provided under the Agreement as part of the Service on one month's prior written notice, to be given not earlier than 6 months from the signature of the Agreement. In the event of termination of any feature or facility of the Service, WEBFOLD shall:
 - 14.1.1 make an appropriate adjustment to the Charges;
 - 14.1.2 use its reasonable endeavours to offer, if so requested, by the Customer and on reasonable terms, a feature or facility approximately equivalent to that which has ceased to be provided.

15. PERSONNEL

The Customer shall not, during the term of the Agreement and for the period of twelve months after its termination or expiration, employ or engage on similar work or offer such employment or engagement to any of WEBFOLD's employees who are involved in performing the Service (save for such employees who have responded in good faith to an open advertisement for a genuine vacancy), without WEBFOLD's prior written agreement. If the Customer breaches the provisions of this clause then liquidated damages equivalent to the charge for one hundred days' work by that person at the applicable WEBFOLD hourly rate will immediately become payable by the Customer to WEBFOLD.

16. ASSIGNMENT

Neither party may assign, transfer or charge any rights or obligations under the Agreement, without the prior written consent of the other, save that WEBFOLD may assign its rights under the Agreement to a subsidiary company, its holding company, or any subsidiary company of its holding company (as such terms are defined in the Companies Act 1985) without the Customer's written consent.

17. TERMINATION FOR DEFAULT

- 17.1 Either party shall be entitled to terminate the Agreement, without further notice, if the other party commits a material breach of the Agreement, and
 - 17.1.1 if the breach is capable of remedy, fails to remedy the breach within a reasonable time of written notice from the other to do so; or
 - 17.1.2 if it is not possible to remedy the breach.

- 17.2 Either party shall be entitled to terminate the Agreement if any of the following events occurs to the other: the presentation of a petition for its winding up or for the appointment of an administrator of its undertaking; or the passing of a resolution to go into or its entry into liquidation (other than for the purposes of and followed by a bona fide reconstruction or amalgamation of a solvent company); or the appointment of an administrator, receiver, administrative receiver or manager over its assets or undertaking or a substantial part thereof; or the convening of a meeting of or the making or a proposal to make any arrangement or composition with its creditors; or its being unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or its ceasing to carry on its business or substantially the whole of its business; or the happening of any equivalent event under the laws of any relevant jurisdiction.
- 17.3 If WEBFOLD delays in acting upon a breach of the Agreement by the Customer, that delay will not be regarded as a waiver of that breach. If WEBFOLD waives a breach of the Agreement by the Customer, that waiver is limited to that particular breach. If the Customer delays in acting upon a breach for 28 days, such delay shall be regarded as a waiver of that breach.
- 17.4 The Customer shall continue to be liable to pay all Charges which are due for the Service during any period in which the Customer does not comply with the Agreement.

18. TERMINATION BY NOTICE

- 18.1 Either party may terminate the Agreement on not less than 3 month's written notice expiring at any time after the Minimum Period of Service.
- 18.2 Any termination under clauses 17 or 18 shall not affect any accrued rights or liabilities of either party nor shall it affect the enforceability of any provision of the Agreement which is intended to continue in force after such termination.

19. DISPUTE RESOLUTION PROCEDURE

If there is any dispute between WEBFOLD and the Customer arising out of the Agreement, WEBFOLD and the Customer will use their reasonable endeavours to settle the dispute in accordance with the following procedures:

- 19.1 Any dispute which has not been settled by the Customer's contract manager and the WEBFOLD account manager within 30 days of the matter being raised, shall be referred to the Chief Executives of the parties by notice in writing of either party to the other party.
- 19.2 If the dispute is not resolved within 30 days of referral to the Chief Executives either party may refer the dispute to WEBFOLD's auditors for mediation and whose decision shall be binding.
- 19.3 Nothing in this clause 19 shall limit either party's rights to bring legal proceedings against the other party.

20. REGULATORY MATTERS

- 20.1 WEBFOLD reserves the right to modify the Service if required by law or regulation and WEBFOLD will notify the Customer as soon as possible of any such modification.
- 20.2 The delay or failure by WEBFOLD to perform any of its obligations under the Agreement which is caused or materially contributed to by a restriction of a legal or regulatory nature and which affects, wholly or partly, the provision of any Service, or a refusal or delay by a third party telecommunications service provider to supply

telecommunications services to WEBFOLD, shall not constitute a breach of the Agreement.

21. ENTIRE AGREEMENT

21.1 The Order Form and these Terms are the whole of the Agreement and the only terms agreed between the parties relating to the subject matter of the Order Form and supersede all previous written or oral agreements relating to it.

21.2 The parties acknowledge and agree that:

21.2.1 they have not been induced to enter into the Agreement by any representation, warranty or other assurance not expressly incorporated into it;

21.2.2 in connection with the Agreement, and except in the case of fraud, their only rights and remedies in relation to any representation, warranty or other assurance shall be for breach of the terms of the Agreement and that all other rights and remedies are excluded; and

21.2.3 no addition or modification to the Agreement shall be binding on the parties unless made in accordance by mutual agreement or otherwise in accordance with the Agreement.

22. NOTICES

Any notice or communication which is given under the Agreement shall be given in writing and shall be regarded as properly served when either delivered personally or sent by pre-paid first class post to the address for each party first before written or such address as shall be subsequently notified in writing to the other party and shall be deemed to have arrived at the time of delivery if delivered by hand or by fax, and 48 hours from the date of posting if by post, provided that if deemed receipt is not on a Working Day or delivery takes place after 1700 on a Working Day, then the notice shall be deemed to be served on the following Working Day.

23. RIGHTS OF THIRD PARTIES

A person who is not a party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

24. LAW

The Agreement shall to be governed by the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.