

# Fastnet International Limited Terms and Conditions

## 1. DEFINITIONS

(1) "Fastnet" means Fastnet International Ltd, a company registered in England, Registered Company Number 3015861.

(2) "Order" means the Order for Services on Fastnet's Order Form or any request by the Customer and accepted as an Order by Fastnet and into which these Terms and Conditions are incorporated.

(3) "Writing" means communication by e-mail, post, fax or hand delivery, such written communication will not be deemed served on Fastnet until received by Fastnet.

(4) "The Customer" means the person or company who contracts with Fastnet for the Services and where one person contracts with Fastnet on behalf of or as an agent for another, the Customer shall be deemed to include all those persons.

(5) "Service(s)" means the Internet Service(s) and services associated thereto and/or provision of Equipment and/or Co-location Space supplied by Fastnet to the Customer and/or the registration of Domain Names or any other service as described in Fastnet's Order Form.

(6) "Internet Service(s)" means the service(s) provided by Fastnet whereby the Customer can gain access to any part(s) of the Internet using Fastnet's services.

(7) "Business Hours" means between the hours of 9am to 5.30pm Monday to Friday excluding public holidays.

(8) "24/7" means twenty four hours, seven days a week, 365 days a year.

(9) "Officer" means company director.

(10) "Domain name" means a name registered, or to be registered, with a Registry for use as part of your URL.

(11) "Registry" means an organisation responsible for holding and processing all records for particular Domain Name extensions.

(12) "Equipment" means the equipment specified on the Order Form

(13) "Carrier" means any supplier of Fastnet for telecommunications services in respect of the Service.

(14) "Access Circuit" means any communications line or data port supplied or made available by Fastnet or its sub-contractors for the purpose of provision of Service(s) to the Customer.

(15) "Base Rate" means the annual base rate of interest from time to time in force as advertised by The Bank of England.

(16) "Co-location" means the accommodation of Customer equipment at a Fastnet PoP.

(17) "Co-located Equipment" is the equipment so accommodated.

(18) "Customer Equipment" means equipment, systems, cabling and facilities provided by the Customer and used in order to obtain the Service(s).

(19) "Customer Premises Equipment" or "CPE" means any equipment, cabling and systems provided by Fastnet (or its subcontractors) which is to be installed at the Customer's premises in order to make available the Service(s) to the Customer. For the avoidance of doubt, Customer Premises Equipment shall not include any equipment which is the subject of a separate supply contract between Fastnet and the Customer.

(20) "IP Address" is a number used by Internet Protocols for the routing and delivery of IP packets.

(21) "Name" means any Internet-specific name specifically requested by, allocated to, or used by the Customer for the provision of Service(s) and shall include, without limitation, any domain name or email address.

(22) "Packet" means an Internet Protocol (IP) packet containing data in a form suitable for transmission over the Internet, including source and destination IP addresses.

(23) "Point of Presence" or "PoP" means a Fastnet-operated or rented facility in which Fastnet keeps its data communications equipment, and is an access point to the Internet.

(24) "RIPE" means the European Internet Registry, Reseaux IP Europeans and their successors in title.

(25) "The Internet" means the global data network consisting of interconnected networks which communicate using TCP/IP ("Transmission Control Protocol/Internet Protocol") and related Internet protocols and standards

(26) "User" means any third party connected to the Customer's network.

(27) "Agreement" means these General Terms and Conditions, the Customer Order Form, the Acceptable Use Policy, any Specific Terms and Conditions and relevant Service level agreements, all of which, taken together, constitute the agreement between the Company and the Customer for the supply of the Equipment and/or Services.

(28) "Security Access List" means a list provided by a Customer of their personnel who are authorised to have or grant access permission.

## **2. TERMS AND CONDITIONS OF SUPPLY**

(a) The parties agree that these terms and conditions (together with any other terms and conditions expressly incorporated into this contract) represent the entire agreement between the parties relating to the sale or supply of the Services and or Equipment and that no statement or representation made by either party has been relied upon by the other in agreeing to enter into this contract.

(b) Fastnet's employees or agents are not authorised to make any representation concerning the Services unless confirmed by an Officer of Fastnet in writing. In entering into the Contract the Customer acknowledges that it does not rely upon any such representation which is not so confirmed.

(c) Any advice or recommendation given by Fastnet or its employees or agents to the Customer or its employees or agents as to supply of the Services which is not confirmed in writing by Fastnet is followed or acted upon entirely at the Customer's own risk and Fastnet shall not be liable for any such advice or recommendation which is not so confirmed.

(d) Quotations issued by Fastnet are given subject to these Terms and Conditions and are not offers capable of acceptance so as to make a legally binding contract. All orders (by whatever name called) submitted to Fastnet require Fastnet's written acceptance before any contract arises and thereafter incorporate these Terms and Conditions.

(e) These terms and conditions exclude any other terms and conditions in any form of contract or order or similar which are inconsistent with these conditions which the Customer may seek to impose, even if such purports to exclude or supersede any terms and conditions inconsistent with them. The Customer accepts that any Service(s) received by them or any contract between Fastnet and Customer, shall be deemed to be acceptance of these Terms and Conditions.

(f) No order which has been accepted by Fastnet may be cancelled by the Customer except with the Agreement in Writing of Fastnet and on terms that the Customer shall indemnify Fastnet in full against all loss, costs, damages, charges and expenses incurred by Fastnet.

(g) Fastnet reserves the right to delegate or sub-contract any part of the Service(s).

(h) We may have to make changes to these terms and conditions. Where this is necessary we will publish the new document on [www.fastnet.co.uk](http://www.fastnet.co.uk).

(i) Any typographical, clerical or other error or omission in any written or printed document or information issued by Fastnet shall be subject to correction or alteration at any time without any liability on the part of Fastnet.

(j) The Customer acknowledges; that it purchases Services in a competitive market and that the bargaining strength of Fastnet was not a relevant factor; that it received no inducement to agree to any term herein; that it knows and understands the existence, extent and meaning of these conditions; that it knows and understands the restriction or exclusion of any rights given to it in this contract or by any of the implied or express conditions and warranties contained in the Supply of Goods and Services Act 1982 or any other enactment or any other principle in law or equity and that it accepts the restriction or exclusion of those conditions as being fair and reasonable having regard to all the circumstances of the Agreement.

(k) Unless (and to the extent) otherwise agreed in writing between the parties, time shall not be of the essence of the performance by Fastnet of any of its obligations under this Agreement.

(l) Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute or be deemed to constitute between the parties a partnership, association, joint venture, or other co-operative entity.

### **3. SPECIFICATIONS**

(a) The quantity, quality and description of and any specification for the Services shall be those set out in the Order Form. All descriptive terms contained in Fastnet's sales literature and price lists are approximate only and shall not form part of this contract.

(b) The Customer shall be responsible to Fastnet for ensuring the accuracy of the terms of any Order (including any applicable specification), and for giving Fastnet any necessary information relating to the Service(s) and within a sufficient time to enable Fastnet to perform the contract in accordance with its terms. The customer is entirely responsible for satisfying itself that all Service(s) supplied by Fastnet (including any descriptions, data, advice, recommendations or other information provided by Fastnet in relation to those Service(s)) are entirely suitable for the Customer's purposes, having particular regard to relevant on-site conditions, the nature of any existing equipment of the Customer or other circumstances of the application of the Services known only to the customer or any particular purpose intended for any Service.

(c) Fastnet reserves the right at all times to substitute, change, rearrange or alter the configuration of the Service(s) or Customer Premises Equipment provided under this agreement. Fastnet shall, where possible, use reasonable efforts to give prior written notice to the Customer of such substitution change, rearrangement or alteration.

(d) The provisions of this contract apply only to those parts of the Internet Service(s) which are provided by Fastnet. Fastnet is not responsible in any way for any other Service or connection, including but not limited to other networks to which Fastnet connects. Fastnet may without notice and from time to time change or alter the networks to which Fastnet connects.

(e) Fastnet shall not be responsible for adapting or modifying the Services to conform to statutory requirements not current at the time of the acceptance of the Order.

#### **4. PRICE AND PAYMENT**

(a) The Price of the Service(s) shall be the price on Fastnet's Order Form. The Customer is responsible for all charges including and after the commencement of the Service. Unless otherwise stated all prices are exclusive of value added tax and any other taxes.

(b) The Customer shall pay Fastnet for the Service(s) in accordance with the rates and in the manner set out in the Fastnet Order Form unless otherwise agreed by Fastnet in writing. Save for the initial payment, the Customer shall pay the price to Fastnet within twenty-eight (28) days of the date on the relevant invoice rendered by Fastnet.

(c) All amounts due to Fastnet under this Agreement shall be paid by the Customer in full (without any set-off, deductions or withholdings whatsoever) by direct debit. Payment by any other method must be agreed in writing. Payment(s) made to Fastnet will be applied to the oldest balance due to Fastnet at the time of payment.

(d) Fastnet may at any time during the initial term but no more than once a year vary the price of the Service(s) payable by the Customer upon giving the Customer at least thirty (30) days prior written notice provided that the percentage increase shall be no greater than an amount equivalent to any percentage increase in the Retail Prices Index last published by the Office for National Statistics before either the date when the immediately preceding increase came into effect pursuant to this clause or the date of the commencement of the Service(s) (whichever is the later) and the Retail Prices Index last published before the current date of notice of variation plus five percent (5%).

(e) If the Customer fails to make payment in full on the due date then, without prejudice to any other right or remedy available to Fastnet, Fastnet shall be entitled to; immediate payment of all invoices rendered by Fastnet to the Customer (whether or not any such invoice has been outstanding for twenty-eight (28) days; cancel the contract (or outstanding part thereof); suspend any further supply of Service(s) to the Customer; enter upon the Customers premises and remove any of Fastnet's equipment; appropriate any payment made by the Customer to such of the Services (or the Services supplied under any other contract between the Customer and Fastnet) as Fastnet may think fit (notwithstanding any purported appropriation by the Customer) and/or charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of eight per cent per annum above Bank of England base rate from time to time. Until payment in full is made, such interest is to accrue on a daily basis. If it be held that Fastnet is not entitled to rely upon this provision, Fastnet will rely upon the statutory provision in respect of interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

#### **5. COMMENCEMENT OF SERVICE**

(a) The Service will be deemed to be accepted by the Customer and to commence immediately upon Fastnet communicating to the Customer by whatever method that it is ready to provide the Service(s).

(b) Fastnet will use its reasonable endeavours to comply with any date or dates for commencement of the Service(s) but such date(s) will constitute only statements of expectation and will not be binding. If Fastnet fails to provide the Service(s) by such date(s) such failure shall not constitute a breach of this agreement and in particular without limitation Fastnet shall not be responsible for delays caused by Carriers or telephone companies providing access circuits, any default of the Customer, the management of the Customer's premises or any failure beyond the control of Fastnet.

(c) Fastnet will not be liable for any loss of, interruption of, or interference with any telephone service during any installation.

## **6. TERM AND TERMINATION**

(a) This agreement shall be effective for an initial term of 12 months (unless specified as longer on the Order Form) and shall continue thereafter until determined in accordance with the provisions herein.

(b) This agreement may be terminated by either party on any date after the end of the initial term provided that written notice is given to the other party at least 1 month in advance of the termination, or longer if specified on the Order form.

(c) The Customer may terminate this Agreement forthwith where the Service(s) provided by Fastnet is interrupted ( 'total loss of service' i.e. no transmission of signals in one or both directions for more than 4 hours after it has been reported to Fastnet) for ten (10) continuous working days provided that the interruption in the service is due to a failure of Fastnet's facility, equipment or personnel and which interruption is not caused by a relevant Carrier or any other party other than Fastnet. Any period of interruption to the Service(s) for the purposes of this provision does not include any period of interruption resulting from the Customer's failure to make payment.

(d) Fastnet may terminate this Agreement forthwith or withdraw or suspend the Service(s) at any time upon:

(i) the Customer failing to make payment to Fastnet in accordance with this agreement;

(ii) the Customer expressly or impliedly repudiating or breaching this agreement by refusing or threatening to refuse to comply with any of the provisions of this agreement or Fastnet's Acceptable Use Policy;

(iii) the Customer entering a voluntary arrangement with its creditors, or has or had a petition or an administration order with its creditors presented against it, or becomes subject to an administration order, or becomes insolvent, goes into compulsory or voluntary liquidation or a provisional liquidator or a receiver and/or manager or administrative receiver is appointed, an encumbrancer takes possession of any of the property or assets of the Customer or if the Customer ceases, or threatens to cease, to carry on any business, fails to or refuses to pay in full any sum due and payable by the Customer to Fastnet on the due date for payment, or Fastnet reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer.

(e) Any termination shall not relieve the Customer of its obligation to pay any charges incurred hereunder prior to such termination. Unless otherwise agreed by Fastnet the Customer shall be liable for all costs and charges incurred by Fastnet arising from such termination. The Parties' right and obligations which by their nature would extend beyond the

termination, cancellation or expiry of this Agreement shall survive such termination, cancellation or expiry.

## **7. SERVICE MAINTENANCE**

From time to time Fastnet and/or a relevant Carrier may have to interrupt the Service(s) or alter the specification of the Service(s) for operational or maintenance reasons. Wherever possible, notice of such interruption shall be given to the Customer prior to the event. Wherever possible, Fastnet shall implement all Service(s) maintenance, specification alterations or suspensions outside Business Hours. In any event the Customer shall have no claim against Fastnet arising from such interruption for whatever loss or for whatever reason.

## **8. FAULT RESOLUTION**

(a) In the event that the Customer becomes aware of a defect, fault or impairment in the provision of the Service(s) other than by way of service maintenance, and the Customer gives written notification to Fastnet of such defect, fault or impairment, then Fastnet shall use its best endeavours to resolve the defect, fault or impairment as quickly as reasonably possible. Any specific service levels agreements presented as part of this agreement will apply.

(b) If it is determined that the defect, fault or impairment is a result of:

(i) negligence, act, omission, or fault of the Customer or its agents, or

(ii) the Customer or its Agent's breach of this Agreement, or

(iii) the failure or malfunction of Customer Equipment, then Fastnet may recover from the customer all reasonable costs incurred in remedying the defect, fault or impairment.

## **9. SERVICE SUSPENSION**

(a) Fastnet may at its absolute discretion elect to suspend forthwith provision of the Service(s) until further notice in the event that:

(i) Fastnet is entitled to terminate this Agreement (and no exercise by Fastnet of its right of suspension under this clause shall exclude Fastnet's right subsequently to terminate this Agreement); or

(ii) Fastnet needs to carry out service maintenance to any Customer Premises Equipment or any other equipment or configurations of equipment which are used to provide the Service(s); or

(iii) Fastnet is obliged to comply with an order, instruction or request of Government, an emergency service organisation or other competent administrative authority or relevant Carrier; or

(iv) if outstanding amounts due under this agreement to Fastnet have not been paid.

(b) Where the suspension is implemented as a consequence of the breach, fault or omission of the Customer, the Customer shall pay Fastnet's reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Service(s). The parties agree that the original fee is a reasonable estimate of such costs and expenses.

## **10. CUSTOMER PREMISES EQUIPMENT**

(a) Where Customer Premises Equipment is provided to the Customer by Fastnet the Terms and Conditions in this section shall apply.

(b) The Customer shall procure all necessary licenses, waivers, consents or registrations necessary to deliver, install, and keep installed at the Customer's Premises any Customer Premises Equipment. Fastnet may advise the Customer of such requirements and the date by which they are required to be fulfilled in a schedule of requirements. The Customer hereby grants all such licenses, consents, or registrations to Fastnet to the extent the Customer has the power and authority to grant the same in respect of the delivery, installation and maintenance of any Customer Premises Equipment at the Customer's other premises.

(c) Title to any Customer Premises Equipment shall at all times belong to and remain with Fastnet and the Customer shall not create or allow any charges, liens, or other encumbrances whatsoever to be placed on any Customer Premises Equipment.

(d) The Customer shall be liable for the loss of or any and all damage to any Customer Premises Equipment which is caused by

(i) the negligent or wilful acts or omissions of the Customer, its servants or agents;

(ii) the breach of the terms of this Agreement by the Customer, its servants or agents; or

(iii) malfunction or failure of any equipment or facility provided by the Customer or its servants or agents, including but not limited to Customer Equipment.

(e) Fastnet shall be entitled at any time to require the Customer to deliver up the Customer Premises Equipment to Fastnet and Fastnet shall have irrevocable licence to enter upon the premises of the Customer or of any third party where the equipment is stored and inspect, remove or repossess the equipment. The Customer shall in any relevant contract with any Third Party protect this right of Fastnet.

(f) The Customer shall not be entitled to pledge or in any way charge by way of security or any indebtedness any of the Customer Premises Equipment which remain the property of Fastnet, but if the Customer does so, all monies owing by the Customer to Fastnet shall forthwith become due and payable without prejudice to any other right or remedy of Fastnet.

(g) If the Customer desires to relocate or otherwise change the place at which the Service(s) is delivered, then the Customer will be liable to pay any additional installation charges for the new location and any Service(s) support costs resulting from such agreed relocation or change of the place of the Service(s).

(h) The Customer shall furnish Fastnet, at no charge, such equipment, space and electrical power as is reasonably required by Fastnet and its subcontractors to enable Fastnet to render the Service(s).

(i) The Customer undertakes:

(i) to house any Customer Premises Equipment in accordance with Fastnet's instructions as may be notified to the Customer from time to time; this shall include, but not be limited to, the provision of electrical power to any Customer Premises Equipment supported by an appropriately specified Uninterruptible Power Supply provided at the Customer's own expense. Fastnet shall not be liable for any fault or depreciation of Service(s) due to failure of the supply of electrical power to any Customer Premises Equipment; such a failure shall be deemed a failure of Customer Equipment for the purposes of assessing whether or not a fault or depreciation of service constitutes a Service Interruption.

(ii) to keep any Customer Premises Equipment at the Customer's premises and stationary at all times.

(iii) not to add, modify, relocate, reconfigure or in any way interfere with any Customer Premises Equipment;

(iv) not to cause any Customer Premises Equipment to be removed, repaired, serviced, or otherwise attended to except by an authorised representative of Fastnet.

(v) not to remove, tamper with, or obliterate any words or labels on any Customer Premises Equipment or any part thereof.

(vi) not to use any Customer Premises Equipment except in accordance with such written instruction as may be notified by Fastnet from time to time.

(vii) to permit Fastnet or its subcontractors to inspect or test any Customer Premises Equipment at all reasonable times.

(viii) on termination of this Agreement (howsoever the same may arise) to yield up any Customer Premises Equipment in a good state of condition and repair to Fastnet and to allow Fastnet or its subcontractors immediate access to the Customer premises to remove any Customer Premises Equipment.

(j) The Customer is responsible for identifying, monitoring, removing and disposing of any hazardous materials which it is required to remove by law prior to any construction or installation work being performed by Fastnet or its subcontractors, and the Customer shall indemnify, keep indemnified, defend and hold Fastnet harmless from any liability incurred in the use of or in connection with hazardous materials on the Customer's premises.

(k) The Customer shall advise Fastnet of all health and safety at work rules and regulations and any other reasonable security requirements applicable at the Customer's Premises, and Fastnet shall observe and ensure that its employees and authorised representatives observe such regulations so advised while at the Customer's Premises, provided that Fastnet shall not be liable hereunder if as a result of conforming with such regulations Fastnet is in breach of its obligations under this agreement.

## **11. CUSTOMER EQUIPMENT**

(a) Where the provision of the Service(s) or Co-location Space and/or the provision of Customer Premises Equipment necessarily involve Customer Equipment the Terms and Conditions in this section shall apply.

(b) The Customer shall ensure at all times that the Customer Equipment shall conform to the relevant national standards of approval and the Customer shall at all times comply with the conditions of such standard or approval. Fastnet reserves the right to disconnect any Customer Equipment if the Customer does not fulfil its obligations under this clause, or if in the opinion of Fastnet or its subcontractors it is liable to cause the death of or personal injury to or damage the property of Fastnet or its subcontractors or any person, or will impair the quality of any Service(s) provided by Fastnet to any of its other Customers.

(c) The Customer shall, if required by any applicable license granted under national law, or if requested by Fastnet, notify or obtain any necessary permission or co-operation of a telecommunications network provider or other relevant person for the connection or maintenance of Customer Equipment. Fastnet shall have no liability whatsoever in any case where such notification is not given or such permission or co-operation is not obtained.

## **12. CO-LOCATION SPACE**



(a) Where Co-location Space is provided to the Customer by Fastnet the terms and conditions in this section shall apply.

(b) In consideration of payments to be made by the Customer, Fastnet grants to the customer a co-location space license to locate telecommunications and related computer equipment in the space specified in the Order Form and the right from time to time by prior appointment with Fastnet to enter the premises in which this space is located for the purpose of repairing and maintaining this equipment. Admittance to the premises outside of Fastnet's normal Business Hours is entirely at Fastnet's discretion.

(c) Fastnet grants to the Customer a revocable licence to use the Co-location Space only to install, operate, and maintain telecommunications and related computer equipment as expressly provided herein. Telecommunications are restricted to conventional cable or fibre-based media. Microwave and optical communications are prohibited unless authorised in writing by Fastnet.

(d) Installation of Co-located Equipment shall be deemed to have occurred when Fastnet has notified the Customer by whatever method that it has completed preparing the Co-location Space to receive Co-located Equipment.

(e) Co-located Equipment must not emit excessive electromagnetic radiation, noise, dust or other pollutants. Co-located Equipment must not draw power in excess of that stated in the Order Form. Co-located Equipment must output signals which conform to relevant telecommunications standards. Co-located Equipment may not be connected or attached to the equipment of other customers or of Fastnet or of other telecommunications service providers without express written permission from Fastnet and from the other party, with any permission from other customers copied to Fastnet. Packet sniffers and other forms of electronic surveillance devices are prohibited. Customer equipment must not be used for illegal or criminal purposes. Equipment not in compliance with these conditions may be disconnected. Unauthorised connections may be removed at Fastnet's discretion.

(f) No signs or emblems may be placed on the exterior of Co-located Equipment or storage racks by the Customer. Neither the Customer nor its subcontractors may in any way alter walls, floors, ceilings, or other parts of the building, the allocated Co-location Space, or any other cabling, construction, or equipment without specific written authorisation from Fastnet.

(g) The Customer must not make any portion of the space available to third parties or locate third party equipment in the space without written authorisation from Fastnet.

(h) Customers staff must wear proper identification at all times when attending upon the Co-located Equipment. Subcontractors and the staff of other telecommunications service providers will be admitted only if arranged in advance and specifically approved by Fastnet in writing and if wearing proper identification. All Customer staff or subcontractors attending Fastnet premises must have the relevant consents as listed on the Security Access List. Fastnet may refuse admission to the Co-located Equipment to any individual who has been observed touching, modifying, or tampering in any way with the equipment of Fastnet or other customers. Visits by the Customer or parties acting on the Customer's behalf are to be escorted by an authorised representative of Fastnet from the time that the party signs in on entering the premises until the party signs out on leaving the premises, unless given permission by Fastnet to be unaccompanied.

(i) Fastnet may at its discretion require the relocation of Co-located Equipment within the building, either because of an emergency or, with 30 calendar days written notice, for good business reasons. Fastnet will make every reasonable effort to avoid such relocation and will work with the Customer to minimise any disruption to services. Fastnet will relocate any cabling and construction installed by Fastnet at its own expense but the Customer will be responsible for any other costs relating to relocation.

(j) The Co-located Equipment shall at all times be at the Customer's risk. The Customer shall be responsible for insuring the Co-located Equipment against all risks (including but not limited to fire, theft, and flood) and for obtaining such other insurance cover (including but not limited to consequential loss and loss of profits cover) as may be appropriate.

(k) The Co-location Space license will be terminated if this Agreement is terminated. Upon the termination of this Agreement or the expiration of the Term of the license as stated on the Order form, the Customer shall at the Customer's own cost remove the Co-located Equipment from Fastnet's premises at a time to be agreed with Fastnet, except that Fastnet shall have a lien over the Co-located Equipment to secure all sums due under this agreement and the Customer shall not be entitled to remove the Co-located Equipment until such sums have been paid. Any Customer co-located equipment not removed within ten (10) working days after this Agreement has been terminated will be removed by Fastnet and any costs and expenses of removal shall be the responsibility of the customer. Fastnet will not remove, erase or delete any data or computer programs before disposal of the co-located equipment.

(l) The Customer will indemnify Fastnet against all costs, claims, demands, losses, damages, expenses, and liabilities of any nature whatsoever suffered or incurred by Fastnet in connection with any claim that the use or possession of the Equipment or any computer programs used in connection with the Co-located Equipment infringes the intellectual property rights of any third party.

(m) The Customer shall indemnify and hold harmless Fastnet, its officers and employees, servants, agents, affiliates and parent company (if any), from and against any and all claims, costs, expenses, or liability arising out of the Customer's use of the Co-location Space or the Customer's operation of the Co-located Equipment.

(n) Unless otherwise agreed by Fastnet in writing, Co-located Equipment may be connected only to Fastnet access equipment and Co-located Equipment may not be used to forward IP packets.

(o) Any visitor to any of Fastnet's Property or must comply with Fastnet's Health and Safety procedures. The relevant documentation will be made available to visitors. The procedures will be explained to any visitor upon request.

### **13. DOMAIN NAMES**

(a) Where the provision of the Service(s) includes the registration of a Domain Name by Fastnet the Terms and Conditions in this section shall apply.

(b) The Customer confirms and warrants that he is the owner of or that he has been duly authorised by the owner or is entitled to use any trade mark, name or Domain Name requested or allocated as its name or Domain Name. The Customer acknowledges that Fastnet cannot guarantee that any name or Domain Name requested by the Customer will be available or approved for use. Fastnet shall be entitled to require the Customer to select a replacement name or Domain Name and may suspend and/or terminate the Service(s) if, in the opinion of Fastnet, there are reasonable grounds for Fastnet to believe that the Customer's current choice of name or Domain Name is, or is likely to be, in breach of the provisions of this clause or of Fastnet's Acceptable Use Policy.

(c) Fastnet does not represent, warrant or guarantee that any Domain Name applied for by the customer or on the Customer's behalf will be registered in the Customer's requested name or is capable of being registered by the Customer or that the use of such Domain Name by the Customer will not infringe any third party rights.

(d) The registration of the Domain Name and its ongoing use by the Customer is subject to the relevant naming authority's terms and conditions of use and the Customer undertakes

that they will comply with such terms and conditions. The relevant naming authority's Terms and Conditions are available from their website or upon request from Fastnet.

(e) The Customer hereby irrevocably waives any claims the Customer may have against Fastnet in respect of any decision of a naming authority to refuse to register a Domain Name and, without limitation, the Customer acknowledges and agrees that any administration or other charge paid by the Customer in respect of the registration of the Domain Name is non-refundable in any event.

(f) Fastnet accepts no responsibility in respect of the use of a Domain Name by the Customer and any dispute between the Customer and any other individual or organisation regarding a Domain Name must be resolved between the parties concerned and Fastnet will take no part in any such dispute. Fastnet reserves the right, on becoming aware of such a dispute concerning a Domain Name, at its discretion and without giving any reason, to either suspend or cancel the relevant Service(s) associated with the Domain Name, and/or to make such representations to the relevant naming authority, as Fastnet deems appropriate.

(g) No transfer of Service(s) including any re-registration or transfer of Domain Names or changes to the delegation of Domain Names will be permitted unless and until all outstanding invoices have been settled and cleared funds have been transferred to Fastnet. In particular the Customer waives the right to any redelegation, re-registration or transfer of any Domain Name by any third party or authority.

(h) Any Internet Protocol address purchased by the Customer from Fastnet shall at all times remain Fastnet's property and the Customer will have a non-transferable license to use such address for the duration of this contract. If this contract is terminated for whatever reason, the Customer's license to use the Internet Protocol address shall automatically terminate and thereafter the Customer will not use such address.

(i) The Customer acknowledges that its contact details, including where such details constitute Personal Data such as name, address, phone numbers and email address, will be passed to RIPE, the registry body for IP addresses. The Customer further acknowledges that it is a necessary requirement of being registered with RIPE that the Customer's details be placed on the RIPE database which is publicly viewable on the RIPE website. The Customer hereby consents to its details being dealt with in the manner stated in this clause.

(j) Fastnet may agree in writing with the customer to accept as part of its Service(s) the transfer of Domain Name(s) already registered by and on behalf of the Customer. Upon the acceptance of such transfer by Fastnet such provisions herein shall apply. The Customer must notify Fastnet of the date of the original registration and the date of re-registration of such name or names.

(k) It is the customer's responsibility to ensure that domains are renewed at the appropriate intervals. Fastnet will take reasonable steps to advise you of the renewal dates, which will require your response in writing. This service is provided as a courtesy and it remains your responsibility to ensure renewal by means of written request whether or not you receive notification from us.

#### **14. WARRANTIES**

Provided that the Customer performs its obligations under this agreement, Fastnet warrants that:

(i) it shall use its reasonable skill and care in providing and maintaining the Service(s), though the Customer acknowledges that it is impossible to provide and maintain a service that would be entirely free of any fault and Fastnet does not undertake to do so;

(ii) that it is not aware as at the date of this agreement of anything within its reasonable control which might adversely affect its ability to perform its obligations under this agreement;

## **15. LIABILITY**

(a)

(i) Except in respect of death or personal injury Fastnet shall not be liable to the Customer for any Claim in respect of the Customers direct loss or damage unless such loss or damage is due to the negligence or failure of Fastnet to perform its obligations under this Agreement and in any event such loss or damage shall be limited to 100% of the charges payable by the Customer to Fastnet in any consecutive twelve (12) month period in respect of any event or series of events.

(ii) Fastnet shall not be liable to the Customer for any claim for indirect or consequential economic or other losses, damages or liabilities such as (without limitation) lost profits, revenue, costs including legal and other professional costs, removal, storage, or other expenses, or injury to reputation suffered by the Customer or other claims to any consequential compensation whatsoever, arising from or in connection with any representation or any express or implied warranty, condition or other contract term or any duty at common law or pursuant to statute which arises out of or in connection with the supply of the Service(s) except as expressly provided in these Terms and Conditions even if Fastnet has been advised of the possibility of such losses.

(iii) Fastnet shall not be liable to the Customer or be deemed to be in breach of the Agreement or any part thereof or any duty at common law or pursuant to statute or otherwise by reason of any delay in performing or any failure to perform, any of its obligations in relation to the Service(s) if the delay or failure was due either directly or indirectly to any cause beyond the Company's reasonable control including but not exclusively; act of God, explosion, flood, earthquake, subsidence, tempest, fire or accident; war or threat of war or preparation for war, sabotage, collapse of structure, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental, parliamentary or local authority, import or export regulation or embargo; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); unexpected difficulties in obtaining raw materials, labour, fuel, parts or equipment; power failure or unforeseeable breakdown in equipment or the act negligence or omission of any relevant carrier.

(b) The Customer agrees to indemnify Fastnet against all or any loss or damage it may suffer as a result of any act, negligence or omission on the part of the Customer its servants or agents or any user of the Customers services or equipment which damages, corrupts, contaminates, impairs or otherwise causes loss or harm to any equipment, property, data or information or otherwise restricts or impinges upon or harms the ability of Fastnet to provide its service(s) to its other customers. Such loss or damage to include (without limitation) lost profits, revenue, costs, goodwill or other claims to direct, indirect or consequential economic or other losses of Fastnet or any other party. The maximum liability of the Customer pursuant to this indemnity shall be £10,000,000 in respect of any event or series of events.

(c) The Parties will use their best endeavours in allocating resources to minimise any such loss or damage or liability.

(d) The Customer warrants that it shall have at all material times an effective policy of insurance to cover any liability or claim that may arise including but not limited to direct, indirect and consequential losses.

(e) Fastnet shall not be liable for the loss or corruption of any of the Customers information or data held on or in any of Fastnet's or the Customers equipment, materials, components or software which may be lost or corrupted at any time including during Fastnet's maintenance,

repair or upgrading of such equipment, materials, components or software and the Customer accepts responsibility for protecting and/or preparing a "back-up" copy of any such information or data prior to Fastnet carrying out such Services.

## **16. CUSTOMER OBLIGATIONS**

- (a) Upon request the Customer shall immediately provide Fastnet with information about the Customer's use of the Service(s).
- (b) The Customer shall provide a support function for the provision of support to Users who are required and directed to use the Service(s) to report all faults, queries and complaints. For the avoidance of doubt, Fastnet shall have no responsibility for provision of support to Users.
- (c) The Customer undertakes to comply with Fastnet's Acceptable Use Policy as published and amended and updated from time to time on the Fastnet website at [www.fastnet.co.uk](http://www.fastnet.co.uk) and any breach thereof shall be a breach of this agreement and shall entitle FastNet to terminate this Agreement forthwith.
- (d) The Customer undertakes to indemnify and keep indemnified Fastnet against any prosecution, civil or criminal, all costs, claims, demands, actions and proceeding which may be brought or threatened against Fastnet by any User or third party to whose networks the Customer's networks connected, expressly including, but not limited to, uses of the Internet which are in breach of Fastnet's Acceptable Use Policy or which arise from the Customer's use of Internet Services or the User's use of Internet Services in any way.
- (e) The Customer undertakes to ensure that no third party may use the Service(s) provided by Fastnet, and to indemnify Fastnet against any prosecutions, civil or criminal, which result from such use. This clause shall not in itself prevent resale or onsale by the Customer to User(s) of Service(s) provided under this Agreement where those User(s) are known to the Customer, and where the User(s) have the full consent of the Customer.
- (f) The Services may be resold, onsold, or otherwise transferred to persons not in the employ of the Customer or to other companies or organisations only with the written permission of Fastnet.
- (g) Intellectual property rights in all software supplied to the Customer remain the property of Fastnet or its licensor. The Customer agrees to comply with the terms of any agreement reasonably required by the owner of intellectual property rights in all software supplied to the Customer for the protection of that software.
- (h) Service(s) and Internet Service(s) may comprise equipment, software, services, technical information, training materials or other technical data, which, because of their origin or otherwise are subject to United Kingdom or United States of America export control regulations or the laws or regulations of another country. In such case, provision of Service(s) and Internet Service(s) shall be conditional upon the parties obtaining and providing all necessary consents. The parties shall provide reasonable assistance to each other to obtain such consents. The Customer undertakes to comply with any applicable export or re-export laws and regulations, including but not limited to obtaining written authority from the UK or USA government as appropriate if the Customer intends at any time to re-export any items of UK or USA origin to any proscribed destination.
- (i) The Customer may not use Fastnet's name in publicity or press releases without Fastnet's prior written consent.

## **17. MISCELLANEOUS**

- (a) Each party agrees to maintain in strict confidence all plans, designs, drawings, trade secrets, business and other proprietary information of the other Party which is disclosed

pursuant to this Agreement. Neither Party shall disclose to any third party such confidential information without the express written consent of the other. No obligation of confidentiality shall apply to the disclosed information which the recipient;

(i) already possessed without obligation of confidentiality; or

(ii) develops independently; or

(iii) rightfully receives without obligation of confidentiality from a third party.

(b) By agreeing to these Terms and Conditions the Customer agrees to the processing of its personal data and sensitive personal data as defined in the Data Protection Act 1998. The Customer confirms that it has required consent from any relevant individual for the processing of their personal data and sensitive personal data for whom Fastnet will deal with.

(c) Except as expressly provided herein no licence, express or implied, is granted by Fastnet pursuant to this Agreement.

(d) Neither party may assign this Agreement without the written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed).

(e) If any dispute arises out of this agreement the financial value of which exceeds the County Court Small Claims upper limit the parties will initially consider the appropriateness of resolving such dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) model mediation procedure in such form as is recommended by CEDR. Any dispute arising under or in connection with these Conditions not so resolved by mediation shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1975.

(f) If any provision of this Agreement is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid and enforceable providing always that if such a provision is of a fundamental nature to this Agreement either party may terminate this Agreement forthwith.

(g) Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right, nor operate so as to bar the exercise or enforcement thereof or to any other right on a later occasion.

(h) Paragraph headings do not form part of this Agreement and shall not be taken into account in the construction of interpretation thereof.

(i) Any notice to be given to either party shall be in writing.

(j) Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

(k) This Agreement shall be governed and construed in accordance with the laws of England, and the Parties irrevocably agree to the exclusive jurisdiction of the Courts of England.