



**THE FOLLOWING TERMS OF BUSINESS APPLY TO ALL SERVICES PROVIDED BY NET PRIMATES LIMITED TO YOU. BY PURCHASING PRODUCTS OR SERVICES FROM NET PRIMATES LIMITED YOU AGREE TO THESE TERMS OF BUSINESS.**

- 1. Definitions**
- 2. Applications of Terms**

#### **Service Specific Terms and Conditions**

- 3. Domain Name Registration**
- 4. Web Site Hosting / Email / Online Stores**
- 5. Managed and Dedicated Server Hosting**
- 6. Web / Applications**
- 7. Internet Access and Other Network Services**
- 8. Online Data Backup**
- 9. Supply of Hardware Equipment**

#### **General Terms & Conditions**

- 10. Orders**
- 11. Payment**
- 12. Intellectual property rights and other consents**
- 13. Liability**
- 14. Indemnity**
- 15. Confidentiality and publicity**
- 16. Termination**
- 17. Notices**
- 18. Law**
- 19. Entire Agreement**
- 20. Miscellaneous**

## 1 DEFINITIONS

**"Agreement"** means the agreement between You and Net Primates, comprising these Terms together with any Orders You may make;

**"AUP"** means Acceptable Use Policy which defines the acceptable terms of usage for your Server or Service;

**"Fees"** means the fee or fees (and Local Administration Costs) due for the provision of the Services as set out in any Order or (if not set out) calculated by reference to the then standard Net Primates prices;

**"IP Address"** the unique address assigned to you by Net Primates used in order to identify and communicate with other devices over the Internet utilising the Internet Protocol Standard;

**"Local Administration Costs"** means any registration fees and other costs incurred by Net Primates on your behalf for the registration or attempted registration of domain names and hosting charges incurred for your Server including currency conversion costs and bank charges;

**"Order"** means the order form or letter signed by You requesting Services;

**"Server"** means the computer server equipment including any required Networking equipment operated by Net Primates in connection with the provision of the Services;

**"Service"** or **"Services"** means any and all services provided by Net Primates under these Terms including, without limitation, domain name registration services; web site hosting, Dedicated servers, Managed servers, and consultancy services and any other services which may be provided from time to time;

**"Standard Price List"** means the list(s) of the standard prices for Net Primates Limited company products which are available on request;

**"Terms"** means these terms and conditions of business;

**"Net Primates"** means Net Primates Limited company registration number 5376201, registered address – 35D Rushington Business Park, Chapel Lane, Totton, Southampton, SO40 9LA, United Kingdom and/or any other group member of Net Primates which shall supply Services to You;

**"Web Site"** means the area on the Server allocated by Net Primates to You for use by You as a site on the Internet; and "You" means the person, firm or company who purchases Services from Net Primates and any of their or its employees, consultants and authorised agents;

**"Dedicated Server"** means the server(s) provided by/to You to/by Net Primates. The operation and management of the server is entirely your responsibility and You accept and agree to be bound by the terms of Net Primate's AUP;

**"Managed Server"** means the server(s) provided to You by Net Primates. The Operation and management of the server or service will be as agreed in the Order and Service Level Agreement(s) covering the service(s);

## 2 APPLICATION OF TERMS

- 2.1 These Terms apply to any or all Services provided by Net Primates to You from time to time. These Terms are made up of a number of constituent parts, including the Service-Specific Terms governing Net Primates's provision of the relevant Service to You, as well as the General Terms that govern the provision of all such Services.
- 2.2 These Terms together with any Service Level Agreements(s) represent the entire agreement relating to the Services and supersede any arrangements previously agreed between You and Net Primates. Save in the case of fraudulent misrepresentation or fraudulent concealment, any representation, warranty or undertaking, whether oral or written, (including in any previous correspondence or communication) and any other terms and conditions sought to be imposed by You by your own order forms or otherwise are expressly excluded.
- 2.3 No change to these Terms, or a subsequent version of these Terms as may be posted on the Net Primates website ([www.netprimates.com](http://www.netprimates.com)) from time to time, or any other part of the Agreement, shall be binding unless made with the prior written consent of a Director of Net Primates. Unless Net Primates notifies You to the contrary, no agent of, or person employed by or under contract with Net Primates, has any authority to alter or vary these Terms or the Agreement in any way.
- 2.4 In addition to these Terms, all domain name registrations are subject to the terms and conditions of any registrar Net Primates may use to fulfil the Order and the rules and regulations of the relevant Network Information Centre (NIC) or similar registry administrator. As a condition of the Agreement You agree to be bound by the rules, regulations, terms and conditions & dispute resolution policies applicable to each domain name applied for on your behalf. Details of these terms and conditions are available from the relevant registries such as Nominet for .uk (<http://www.nominet.org.uk/go/terms>)
- 2.5 In addition to these Terms, all third party supplied services such as and not limited to Broadband (xDSL) and Leased Lines are subject to the terms and conditions, relevant rules, regulations and SLA's of the relevant third party supplier Net Primates may use to fulfil the Order. Further details are available on request.
- 2.6 Net Primates may alter these terms and agreement at any time without notification to You provided that the current Terms are available on Net Primates's Web site ([www.netprimates.com](http://www.netprimates.com)). Your sole remedy in the event that You do not agree to amendments made to the Terms shall be to serve 3 months written notice of contract termination without any right to damages or service credit.

## Service Specific Terms and Conditions

### 3 Domain Name Registration

#### General

- 3.1 Net Primates acts as an agent and reseller for different Registrars and Domain name sellers & as your agent when purchasing domain names. The contract for domain name registration is between you and the naming authority. Your use of a domain name, once registered, may be challenged by a third party; if so, the Uniform Domain Name Dispute Resolution Policy (the "UDRP") or other as amended from time to time and provided by the Registrar responsible shall apply to all registrations or renewals. An example of such is ICANN's UDRP available at <http://www.icann.org/udrp/udrp.htm>
- 3.2 We do not warrant or guarantee that the domain name applied for will be registered in your name or is capable of being registered by You. Accordingly, You should take no action in respect of your requested domain name(s) until You have been notified that your requested domain name has been registered.
- 3.3 The registration of the domain name and its ongoing use is subject to the relevant naming authority's terms and conditions of use and You are responsible for ensuring that You are aware of those terms and conditions and can and do comply with them. You irrevocably waive any claims You may have against Net Primates in respect of the decision of a naming authority to refuse to register a domain name and, without limitation agree that the administration charge paid by You to Net Primates shall be non-refundable in any event.
- 3.4 We accept no responsibility in respect of the use of a domain name by You and any dispute between You and any other individual or organisation regarding a domain name must be resolved between the parties concerned and we will take no part in any such dispute. We reserve the right, on our becoming aware of such a dispute, at our sole discretion and without giving any reason, to either suspend or cancel the domain name, and/or to make appropriate representations to the relevant naming authority. You warrant and undertake that to the best of your knowledge and belief neither the registration of the domain name nor the manner in which it is directly or indirectly used by You or and any licensee directly or indirectly infringes the legal rights of a third party or is illegal in the UK.
- 3.5 You are solely responsible for providing Net Primates with accurate and up-to-date contact information and we shall not accept any responsibility for any cancellation or refusal to renew a domain name by the relevant naming authority due to any failure to provide such information. Any changes made by You to your details in any manner whatsoever are your own responsibility. Whilst we will make every effort to remind you when a renewal of a registration is required We are not responsible for the renewals of any domain name registration and You should make your own arrangements for reminding yourself when any name is due for renewal
- 3.6 Where Net Primates has registered a domain name on your behalf and should you wish to transfer the domain to an alternative Registrar, the ICANN-adopted consensus policies on transfer of sponsorship of registrations between registrars shall apply. We reserve the right to charge an administrative fee in respect of any transfers to another web hosting or domain name registration company in accordance with our rate applicable at the time.

### **Information You are required to submit**

- 3.7 As part of the registration process, You are required to provide certain information and to update promptly this information as needed to keep it current, complete and accurate. This information will be used by Net Primates in accordance with its Privacy Policy. The information You are obliged to provide in connection with the domain name You are registering is the following:
- (a) Your name and postal address (or if different, that of the domain name holder);
  - (b) The domain name being registered;
  - (c) The name, postal address, e-mail address, voice telephone number, and where available, fax number of the administrative contact for the domain name; and
  - (d) The name, postal address, e-mail address, voice telephone number, and where available, fax number of the billing contact for the domain name.
- 3.8 You agree and acknowledge that when You renew your domain name registration, the type of information You are required to provide may have changed. If You do not wish to provide the new required information, your registration may not be renewed.
- 3.9 All other information which we may request from You at registration is voluntary. However, not providing this information may prevent You from obtaining all products and services made available to domain name registrants by Net Primates, other than registration of the domain name.
- 3.10 If You intend to license use of a domain name to third party You are still responsible for providing the contact information specified above and for providing and updating accurate technical and administrative contact information. You accept liability for any wrongful use of the domain name unless You promptly discuss the identity of the license to any party providing reasonable evidence of actionable harm.

### **Additional information maintained about your registration**

- 3.11 In addition to the information You provide, we maintain records relating to your domain name registration. These records may include:
- (a) The original creation date of the registration;
  - (b) The submission date and time of the registration application to Net Primates and by Net Primates to the proper registry;
  - (c) Communications (electronic or paper form) constituting registration orders, modifications, or terminations and related correspondence between You and Net Primates;
  - (d) Records of account for your domain name registration, including dates and amounts of all payments and refunds
  - (e) The IP addresses of the primary nameserver and any secondary nameservers for the domain name;
  - (f) The corresponding names of those nameservers;
  - (g) The name, postal address, e-mail address, voice telephone number, and where available, fax number of the technical contact for the domain name;
  - (h) The name, postal address, e-mail address, voice telephone number, and where available, fax number of the zone contact for the domain name;
  - (i) The expiration date of the registration;
  - (j) Information regarding all other activity between You and Net Primates regarding your domain name registration and related services.

## **Obligations relating to provided data**

- 3.12 In the event that, in registering the domain name, You are providing information about a third party, You hereby represent that You have (a) provided notice to that third party of the disclosure and use of that party's information as set forth in this Agreement, and (b) that You have obtained that third party's express consent to the disclosure and use of that party's information as set forth in these terms and conditions.
- 3.13 You acknowledge that wilfully providing inaccurate information or wilfully failing to update information promptly will constitute a material breach of these terms and conditions and will be sufficient basis for cancellation of your domain name registration. You further agree that your failure to respond for over fifteen (15) calendar days to inquiries by Net Primates concerning the accuracy of contact details associated with your registration shall constitute a material breach of these terms and conditions and will be sufficient basis for cancellation of your domain name registration
- 3.14 Net Primates will not process data about any identified or identifiable natural person that we obtain from You in a way incompatible with the purposes and other limitations which we describe in this Agreement.
- 3.15 Net Primates will take reasonable precautions to protect the information it obtains from You from loss, misuse, unauthorised access or disclosure or use, or alteration or destruction, or that information. Net Primates will have no liability to You or any third party to the extent such reasonable precautions are taken.

## **Disclosure and use of registration information**

- 3.16 You agree and acknowledge that Net Primates will make available domain name registration information You provide or that we otherwise maintain to ICANN, to the registry administrator(s), and to other third parties as ICANN and applicable laws may require or permit. You further agree and acknowledge that Net Primates may make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information You provide, for purposes of inspection or for targeted marketing and other purposes as required or permitted by ICANN and applicable laws.
- 3.17 Additionally, You acknowledge that ICANN may establish guidelines, limits and/or requirements that relate to the amount and type of information that Net Primates may or must make available to the public or to private entities, and the manner in which such information is made available.
- 3.18 You hereby consent to any and all such disclosures and use of, and guidelines, limits and restrictions on disclosure or use of, information provided by You in connection with the registration of a domain name (including any updates to such information), whether during or after the term of your registration of the domain name. You hereby irrevocably waive any and all claims and causes of action You may have arising from such disclosure or use of your domain name registration information by Net Primates.
- 3.19 Certain Net Primates users have access to Net Primates's control panel. If You are one of those users, You may use the control panel utility to modify the zone file, DNS, IP, MX Records and SOA WHOIS, and contact information for domain name registered through or administered by Net Primates or registered by a Net Primates reseller. Users without such access should contact the Net Primates Support via telephone or via email (support@netprimates.com) to effect any alterations.

## Ownership of data

- 3.20 You agree and acknowledge that Net Primates owns all database, compilation, collective and similar rights, title and interests worldwide in our domain name database, and all information and derivative works generated from the domain name database. You further agree and acknowledge that Net Primates own the following information for those registrations for which we are the registrar:
- 3.21
- (a) the original creation date of the registration
  - (b) the expiration date of the registration
  - (c) the name postal address, e-mail address, voice telephone number, and where available fax number of the technical contact, administrative contact, zone contact and billing contact for the domain name Registration
  - (d) any remarks concerning the registered domain name that appear or should appear in the WHOIS or similar database
  - (e) any other information we generate or obtain in connection with the provision of domain name registration services, other than the domain name being registered, the IP addresses of the primary name server and any secondary name servers for the domain name, and the corresponding names of those name servers.

## Domain Registrar Transfers

### Transfers Inbound

- 3.22 You agree that you can change registrar for an existing domain name only in accordance with the policy of the relevant registry. You agree you may not change registrar for a period of sixty (60) days after initial registration of the domain name with Net Primates. Only the "Authoritative Holder" (the entity listed as the registrant in the current domain name registration) of the domain name registration may initiate a request to transfer that domain name registration from another registrar to Net Primates. The request to transfer a domain name registration from another registrar to Net Primates may be denied:
- (a) during the first sixty (60) days after initial registration of the domain name with the original Registrar;
  - (b) in accordance with circumstances described in the Domain Name Dispute Policy;
  - (c) if there is a pending bankruptcy of the domain name holder;
  - (d) where there is a dispute over the identity of the domain name holder;
  - (e) by operation of law; or
  - (f) at the discretion of the then current registrar or Service Provider.

It is the responsibility of the Authoritative Holder to ensure that the request to transfer will not be denied for any of the above reasons prior to initiating and paying for the registrar transfer services. Fees are not refundable, but can be applied to subsequent transfer requests at Net Pimate's sole discretion. Upon successful completion of the registrar transfer request, Net Primates shall immediately become the registrar of record. You will be required to extend your existing registration term for one (1) year from the date your existing registration is set to expire, provided that the total unexpired term of a registration does not exceed ten (10) years.

To initiate a Domain Registrar transfer You must provide a completed Domain Transfer form which should be faxed to 02381 800801, this must be returned along with a copy of the "Authoritative Holder's" headed paper.

## Transfers Outbound

3.23 You agree that you can change registrar for an existing domain name only in accordance with the policy of the relevant registry. You agree you may not change registrar for a period of sixty (60) days after initial registration of the domain name with Net Primates. Only the "Authoritative Holder" (the entity listed as the registrant in the current domain name registration) of the domain name registration may initiate a request to transfer that domain name registration from Net Primates to another registrar or Service Provider. You hereby represent that you have the full and complete authority as the holder of the domain name registration to initiate such a transfer, or that you have been given full and complete authority by the Authoritative Holder of the domain name registration to initiate such a transfer. Net Primates, at its sole discretion, may require you to provide documentation that proves that the Authoritative Holder of the domain name initiated this transfer request. The request to transfer a domain name registration from Net Primates to another registrar may be denied:

- (a) during the first sixty (60) days after initial registration of the domain name with the original Registrar;
- (b) in accordance with circumstances described in the Domain Name Dispute Policy;
- (c) if there is a pending bankruptcy of the domain name holder;
- (d) where there is a dispute over the identity of the domain name holder;
- (e) where there is a dispute over monies owed to Net Primates by the account holder;
- (f) where the relevant transfer paperwork has not been completed;
- (g) by operation of law; or
- (h) at the discretion of the then current registrar or Net Primates

It is the responsibility of the Authoritative Holder to ensure that the request to transfer will not be denied for any of the above reasons prior to initiating and paying for the registrar transfer services to another registrar. Net Primates cannot be held responsible for any registrar fees paid to third party registrars or Service Providers which are none refundable due to the failure of a registrar transfer request.

To initiate a Domain Registrar transfer You must provide a completed Domain Transfer form which should be faxed to 02381 800801, this must be returned along with a copy of the "Authoritative Holder's" headed paper.

## 4 Web Site Hosting / Email / Online Stores

4.1 We specifically exclude any warranty as to the accuracy or quality of information received by any person via the Server and in no event will we be liable for any loss or damage to any data stored on the Server. You are responsible for maintaining insurance cover in respect of any loss or damage to data stored on the Server.

4.2 You warrant to Net Primates that You will only use your assigned Web Site or Server for lawful purposes. In particular, You further warrant and undertake to Net Primates that:

- (a) You will not, nor will You authorise or permit any other party to, use the Server in violation of any law or regulation;
- (b) You will not knowingly or recklessly post, link to or transmit:
  - (i) any material that is unlawful, threatening, abusive, harmful, malicious, libellous, defamatory, obscene, pornographic, profane or otherwise objectionable in any way;
  - or
  - (ii) any material containing a virus or other hostile computer program;
  - (iii) any material that shall constitute or encourage a criminal offence, give rise to civil liability or that violates or infringes any trade mark, copyright, other intellectual property rights or similar rights of any person, firm or company under



the laws of any jurisdiction; and

(c) You will conform to the standards and acceptable use policies of Net Primates from time to time and will not yourself, and will ensure that none of your end users, make excessive or wasteful use of the Server to our detriment or that of our other customers.

- 4.3 Net Primates may suspend the Service immediately in its sole discretion if we receive any complaint that material on the Server may be unlawful, harmful or defamatory or if we believe our standards or acceptable use policy has been breached
- 4.4 We may disclose your name and address to a complaining individual or naming authority if in our reasonable discretion, it is necessary or appropriate to do so.
- 4.5 You warrant, undertake and agree that:
- (a) all transactions within any online store system operated by you will be contracts for the sale of goods between You as the merchant and your end-user customer and You agree that we may include an exclusion of our liability in respect of such purchases and transactions in such form as we deem appropriate;
  - (b) the information contained within any online store system complies with all applicable law, including, without limitation, any distance selling regulations and data protection regulations from time to time in force;
  - (c) You will keep secure any identification, password and other confidential information relating to your account and You will notify Net Primates immediately of any known or suspected unauthorised use of your account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of your password information.
- 4.6 Whilst we shall use reasonable endeavours to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers.

#### **Email**

- 4.7 You are responsible for sending mail in accordance with any relevant legislation (including data protection legislation) and for sending the same in a secure manner. We will take all reasonable steps to ensure accurate and prompt routing of messages but we will not accept any liability for on receipt or misrouting or any other failure of email.
- 4.8 Net Primates provide filtering of email messages that pass through the Email Servers for the purpose of identifying Spam, known viruses and other disruptive content. Net Primates makes reasonable effort to configure its automated software to accurately identify Virus/Spam Email, however the You acknowledge and agree that it is not possible to identify such content with 100% accuracy and that Net Primates does not guarantee that it will identify and block all of the Virus/Spam Email that You receive through the use of the Email Services, nor does Net Primates guarantee that the emails that are identified or blocked by the filtering software truly contain Virus/Spam Email content. Net Primates recommends that You should still have an Anti Virus programs running on your own computer and network.

You agree to and understand the risks associated with using Email Services and receiving and transmitting email messages via the Internet. Net Primates will not be held liable for any damage caused by viruses and/or Spam received through emails received via our servers.

#### **5 Managed and Dedicated Server Hosting**

- 5.1 Hosting services are provided on the basis of an initial and minimum term of 12 months. Thereafter the services will automatically continue until terminated by either You or Net Primates by each party giving to the other 90 days notice in writing . Any such termination or cancellation will be subject to the payment of any outstanding charges.

- 5.2 Net Primates will invoice You, take regular credit card payment authorised by You or direct debit payments authorised by You quarterly in advance unless otherwise agreed. The first invoice will cover the set-up, three months service charges, to include bandwidth, machine(s) rental or purchase (if any) and any additional rack space charges. Purchased servers must be fully paid for before the service will commence. Subsequent quarterly invoices will include charges at the rates then in place for excess bandwidth used above the agreed bandwidth.
- 5.3 You acknowledge that the fee payable for the hosting package you use is based on a set bandwidth allowance. If, in any calendar month, you obtain any bandwidth usage over that basic allocation then Net Primates will charge you its standard over usage charge, which will be invoiced one calendar month in arrears and payable in accordance with clause 7.
- 5.4 In providing services to You Net Primates assigns to You one or more IP Addresses for your use. When the agreement between You and Net Primates is terminated for whatever reason, the IP addresses revert to Net Primates and may be assigned to another customer.

## 6 Web / Applications

- 6.1 Payment Terms: Upon confirmation of the Customer's order, Net Primates shall raise an invoice for 50% of the quoted price, and the invoice shall be due for payment upon receipt. Upon completion of the work specified in the Quotation, Net Primates shall raise a second invoice for the remaining 50% which shall be due for payment within 15 days.
- 6.2 In the event that the Customer gives written notice to terminate the continuation of the project ordered by him, should the Customer have already paid the first 50% invoice, then Net Primates is not bound to make any refund of that sum. Should Net Primates have already commenced work upon the project, and be able to demonstrate such progress to the Customer by presentation of materials written or created expressly for that project, then Net Primates reserves the right to serve an invoice upon the Customer for the final 50% portion of the project ordered by the Customer and hence proceed to completion and delivery. In the event of non-payment of any sum invoiced for work of this type, Net Primates reserves the right to offset sums received from the Customer for other categories of invoices in payment towards this category of service.
- 6.3 Except as specifically amended within the Quotation, Net Primates shall retain title to the copyright of all computer code written by employees of Net Primates, howsoever that code subsequently be applied to computer applications, and whether or not that code is embedded within software written for and sold to the Customer. Software written for and purchased by the Customer may also include embedded within it the proprietary computer code which forms the basis of the operating system or programming language or other computer utility, and Net Primates specifically excludes such proprietary code from this statement of copyright title where that code is subject to previously established copyright by its authors or where the code has been previously declared to be in the public domain. Net Primates shall use its best endeavours to ensure that such proprietary code is provided onto the Customer within the proper terms of its licensed usage constraints but Net Primates will accept no claim of liability should the Customer make use and application of the code outside of the terms defined by the owner of the relevant copyright.
- 6.4 **Application performance** Net Primates shall use its best endeavours to create computer software products as agreed to be purchased by the Customer and shall offer a warranty as described herein. Net Primates warrants that the product delivered to the Customer shall perform according to the logical structure which enables the processes therein to function correctly. However Net Primates denies all liability for the timely operation of the product when used within an Internet environment, where the Customer or third party is providing the computer equipment upon which the product is to reside or depend upon for any part of its functionality. Should the Customer have also ordered computer equipment from Net Primates to provide the residence and interfaces for the operation of the product, then Net Primates reserves the right at its own cost to amend the detailed construction of the equipment or the logical functioning of

the product in order to effect the timely operation of the product in a working environment, and shall deny all liability thereafter should the Customer prevent such acts by Net Primates. By confirmation of contract with Net Primates, the Customer specifically confirms his understanding that the timely operation of the Internet and world wide web is governed by constraints beyond the control of either party, and that Net Primates is not liable for perceived slow operation of an application written for the Customer, and accepts that from time to time Net Primates may offer advice upon amendments which may become necessary to improve the perceived speed of operation.

## 7 Internet Access and Other Network Services

- 7.1 **Payment Terms:** Upon confirmation of the Customer's order, Net Primates shall raise an invoice for the first period of the service provision being a minimum of one month in advance, and the invoice shall be due for payment upon receipt and service shall not commence until receipt of that payment.
- 7.2 At the same time, Net Primates shall provide to the Customer with electronic Direct Debit Mandate Order Form, and shall request the Customer to complete that form and return to Net Primates. Net Primates is unable to provide the second and further period's service unless it is in receipt of this validly completed Direct Debit form prior to 30 days before the end of the first service period. Without the receipt of this form within that time, the service shall be terminated on the last day of the period paid for, and Net Primates shall reconnect the service upon receipt of a new purchase order with payment.
- 7.3 **Term & Termination:** The Customer may give 30 days written notice to terminate the service whereupon advance payments remain payable and cannot be refunded. Payment will be due in full for the complete term of the contract. Net Primates may suspend the service for non-payment or misuse. Net Primates may suspend service temporarily for maintenance work to be carried out when reasonable notice will be given if possible by display upon the Company's Internet Home Page.
- 7.4 **Provision and Content of Service:** Net Primates will make reasonable best endeavours to give prompt and continuing service. Net Primates specifically excludes any warranty as to accuracy of information received through a connection to the internet and world wide web, and denies all legal responsibility in all areas should illegal, libellous or obscene material be sourced by the Customer or his agent via Net Primates internet service.
- 7.5 **xDSL Service:** Net Primates, is a reseller of the "20CN and 21CN" service of British Telecommunications Plc. (BT) who are the technical provider of the service. In this section, the Standard Conditions of Supply are those published by BT which shall apply to relations and trade between Net Primates and the Customer. In the event of conflict or lack of clarity, the terms in the BT document shall take precedence over those published herein by Net Primates.
- 7.6 Net Primates accepts no liability in contract, tort or otherwise including negligence for:
- a. inability to gain access to the Service as a result of routine or emergency maintenance on the system or excessive demand for the Service;
  - b. loss of data including both data transmitted and other data held by you;
  - c. delay or failure in transmitting or receiving material;
  - d. indirect or consequential losses arising from use of the Service including loss of revenue, business, anticipated savings or profits.

## **8 Online Data Backup**

- 8.1 Net Primates shall not be obliged to accept an order or provide the Service to you unless and until we have received written confirmation, or (if requested in our discretion) evidence, that the terms specified in Clause 10 of the General Terms and Conditions have been satisfied and:
- a) we have sent written notice to you (either by post, fax or e-mail) of our acceptance of the Customer Order Form (or otherwise commenced the Service);
  - b) we have received any initial Charges due from you in respect of the Service.
- 8.2 You agree not to use the backup service to store photographs, pseudo-photographs, films, articles, sound records, messages, or any other material that may be stored in a computer that may be described as indecent or obscene or is otherwise illegal.
- 8.3 The backup service uses a shared yet private and secure platform, therefore you may not use the service in any way which might detrimentally affect the service or experience of other users of the service. Net Primates reserves the right to remove users who consistently misuse the service.
- 8.4 We will use our reasonable endeavours to ensure that the Service performs in accordance with the help file that accompanies the Service and Software and any other Company literature that is provided to you in relation to the Service and the Software. In the event of any failure, we will use our reasonable endeavours to remedy such failure as soon as reasonably practicable to do so.

### **LIABILITY**

- 8.5 Under no circumstances will Net Primates be liable to you or any other person for data that was never sent by you, using the Software, to the relevant backup data centre assigned to the Service by Net Primates. You are therefore advised to check the log file to ensure that the desired files have been transmitted.
- 8.6 Net Primates accepts liability to the extent it results from the negligence of Net Primates and its employees for death or injury without limit. Nothing in this Agreement shall limit liability for fraud.
- 8.7 In all other cases not falling within clause 8.6, Net Primates total liability to you or any other person (whether in contract, tort, including negligence, or otherwise) under or in connection with the Backup Service or provision of the Backup Software will not exceed the fees paid by you for the use of the Service and Software.

### **SERVICE PERIOD**

- 8.8 Once the Service has been activated and is available for you to use, you may only end this Agreement by notice equal to the Minimum Cancellation Notice Period which must expire on or after the Minimum Service Period. The Minimum Service Period is 1 month from activation of the Service.
- 8.9 Unless otherwise stated, the Minimum Cancellation Notice Period is 14 days (to expire on or after the Minimum Service Period).

8.10 We may terminate the Service by notice equal to the Minimum Cancellation Notice Period (to expire at any time on or after the Minimum Service Period) without our incurring any liability.

8.11 The licence of the Software shall terminate immediately upon the earlier of the following to occur:

- a) 30 days after you have failed to pay any service charges due under Clause 8.16 on their due date; or
- b) if you become bankrupt, go into liquidation, suffer or make any winding up petition, make an arrangement with your creditors, have an administrator, administrative receiver or receiver appointed or suffer or file any similar action in consequence of debt.

8.12 Your license will also terminate without further action or notice by Net Primates if you become bankrupt, go into liquidation, suffer or make any winding up petition, make an arrangement with your creditors, have an administrator, administrative receiver or receiver appointed or suffer or file any similar action in consequence of debt.

8.13 Following termination of your licence for whatever reason:

- a) You will destroy the Software together with all copies in any form, including copies on your hard and backup disks.
- b) Any use of any copies of the Software will be unlawful; and Net Primates shall have the right to delete your stored data without liability for loss or damage.

8.14 You agree to the contract for the provision of the Service as laid out in 8.8. If you terminate the Service prior to the expiry of the Minimum Service Period, otherwise than by reason of any breach of this Agreement by Net Primates, you shall make a one-off payment equal to the aggregate charges payable for the length of time remaining under the Minimum Service Period calculated on the banding rate applicable to your highest rate of usage of the Service.

8.15 The Service is otherwise subject to the termination provisions of the General Terms and Conditions

## **CHARGES**

8.16 Except as otherwise provided in the Agreement, all Charges and other sums due from you in respect of the Service and/or Software shall be set out in the Customer Order Form and/or the invoice relating to such Service and/or Software.

8.17 You shall pay the Charges (without any set off or deduction of any kind) on a monthly basis as stated in the Customer Order Form and/or the invoice referred to at Clause 8.16 above.

8.18 Where the Customer has a 30 day credit account, we will send you a VAT invoice following completion of the provision of the Services. Where you have no credit facility, we will send you a VAT receipt following receipt by us of your payment.

8.19 You agree that you will notify us as soon as possible of any change in your credit/debit card or bank account details. Should you terminate the Service in accordance with this Agreement, it is your responsibility to terminate any standing order or Direct Debit with your bank

## 9 Supply of Hardware Equipment

- 9.1 Upon confirmation of the Customer's order, Net Primates shall raise an invoice for the sale and shall effect processing of the order upon receipt of payment in full. Customers may apply to Net Primates for the establishment of a Trade Account which shall be at the discretion of the Company to so do.
- 9.2 **Damage** Risk of loss or damage to the goods shall pass to the Customer and delivery shall occur  
(a) upon the Company or its agent loading the same onto the vehicle of the Customer or its carrier; or  
(b) If Net Primates agrees to deliver to the Customer, upon arrival at the Customer's premises on the vehicle of Net Primates or its carrier or its agent; or  
(c) if Net Primates is to install the goods, when they have been located at the Customer's premises or other defined location and have been connected to power and other necessary connections but before any proof of functionality is displayed.
- 9.3 **Delivery**  
(a) In the case of failure to deliver by the estimated time the Customer shall not rescind the contract for this reason unless on or within 14 days after the estimated delivery date the Customer gives to Net Primates notice in writing specifying a 14 day period within which the goods in question are required to be delivered and Net Primates fails to deliver within that period.  
(b) No claim for short delivery or in respect of damage in transit will be accepted by Net Primates unless the shortage or damage is noted on the delivery note or reported to Net Primates within two working days from delivery. In such a case Net Primates will make up the shortfalls or repair or replace the damaged goods
- 9.4 **Installation** If the quotation includes installation of the goods, then Net Primates will endeavour to do so as soon as practicable after delivery but does not accept liability for delay in installing the goods, unless specifically agreed in writing by Net Primates.

### Title & Insurance

- 9.5 Goods and products supplied by Net Primates shall remain the property of Net Primates until payment in full of all monies owing to Net Primates in respect of such goods has been received by Net Primates.
- 9.6 Net Primates may at any time after monies become due claim such amounts rather than recovering the goods.
- 9.7 All goods and products which have not been paid for in full shall be kept insured by the Customer for no less than the invoice value of the goods and any proceeds of such insurance shall be held on trust for Net Primates.
- 9.8 Net Primates shall be entitled at any time to repossess goods which remain the property of Net Primates and the Customer hereby grants to Net Primates, its agents and servants a licence to enter upon any premises where such goods are stored for the time being for the purpose of repossessing the goods and agrees to give Net Primates such assistance as Net Primates may require.

## General Terms & Conditions

### 10 Orders

- 10.1 Each Order for Services by You shall be deemed to be an offer by You to buy the Services from Net Primates subject to these Terms. No Order shall be deemed to be accepted by Net Primates until Net Primates issues a written acknowledgement or (if earlier) the Services are provided.
- 10.2 Net Primates shall be under no obligation to deliver any Services in addition to those identified in the Order without the prior written consent of a duly authorised representative of Net Primates
- 10.3 You shall provide to Net Primates at your cost, any information, resources or facilities reasonably requested by Net Primates for the delivery of the Services and, where necessary, ensure that your employees, contractors and other suppliers co-operate fully and promptly with Net Primates
- 10.4 Any instructions supplied by You to Net Primates in relation to the Services must be complete, accurate and clearly legible. Net Primates reserves the right to make a charge for any costs and any additional work incurred by Net Primates from any failure by You to comply with this provision and shall not be liable for any errors caused by such failure.
- 10.5 Net Primates reserves the right to increase prices with fourteen (14) days prior written notice should it's third party costs increase. Upon receipt of such notice you have 7 days in which to cancel your services in writing.
- 10.6 No purported cancellation of any Order or part of an Order will be effective unless and until Net Primates gives written acknowledgement of cancellation. Net Primates may, as a condition of such acknowledgement, or otherwise on early termination in accordance with clause 14, impose such reasonable charge for cancellation as it shall consider appropriate including a charge for any costs (including Local Administration Costs) and for any work incurred by Net Primates at the date cancellation is acknowledged.
- 10.7 You acknowledge and agree that our services commence upon the sending of our notice of confirmation, pursuant to clause 10.1, and that there is no right to cancel the contract between us under the Council Directive 97/7/EC on the protection of consumers in respect of distance contracts or associated local laws.
- 10.8 All goods, but not services or software, will be new unless otherwise notified to the Customer by Net Primates at the time of Quotation.
- 10.9 Where Net Primates is not the manufacturer or author of products sold to the Customer, then the Customer shall have the benefit of the manufacturer's warranty as applicable to the product supplied.
- 10.10 All goods and services supplied shall comply with all legal requirements for such items in the United Kingdom if supplied by Net Primates from the United Kingdom. Net Primates denies legal responsibility for all goods and services supplied to a country outside of the United Kingdom, if such laws in the buying country conflict with those of the United Kingdom on such issues of offence. It is the responsibility of the Customer to ensure that he is compliant with the laws in the country within which it intends to use or apply or publish the products supplied by Net Primates.
- 10.11 Net Primates shall not be liable for defects in the products of any type discovered after delivery, if caused or contributed to by the goods having been stored, used or maintained otherwise than in compliance with any specifications laid down by Net Primates or the manufacturers of the goods or caused by the Customer having performed or permitted to be performed any unauthorised maintenance or repair or alteration to the products.

- 10.12 Net Primates will not be liable to the Customer for any loss or damage suffered as a result of the products supplied by Net Primates failing to perform if such failure is caused by faults or disruptions in the service provided by any type of telecommunications network provider.
- 10.13 Net Primates shall have no liability to the Customer for consequential or any indirect loss, howsoever caused and in all countries. All conditions, warranties or other terms that are express or implied by law which are inconsistent with this condition are so far as legally possible within the United Kingdom excluded from Net Primates's liabilities.
- 10.14 Where technically appropriate, all products supplied are designed to be compatible with the type of circuit ordinarily supplied by British Telecom (BT) plc from time to time, and such shall be regarded as the operative standard unless agreed by Net Primates in writing. Net Primates makes no representation as to the compatibility of the goods with telecommunications supplied to the site where such products are to be used if the telecommunications are not to the standard specifications of BT.

## 11 Payment

- 11.1 Without prejudice to our other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, we reserve the right, forthwith and at our sole discretion, to suspend the provision of Services to You.
- 11.2 Subject to an increase in third party costs such as Power costs, the Fee for the Services shall be in accordance with the relevant scale of charges and rates detailed on your order form. Net Primates reserves the right to alter the Fees payable for Services at any time and any provision of Services after such time shall be deemed to have been made in acceptance of such new Fees. Subject to clause 10.3 such alterations will not affect any previously accepted Order or quotation given under 10.5 below.
- 11.3 You acknowledge that increases in third party fees beyond Net Primates control may result in Net Primates increasing its fees and You agree to pay the increased fees if higher than those set out in the Order.
- 11.4 Unless otherwise expressly specified in the Order, and subject to clause 10.2, all quotations given by Net Primates for Net Primates's Fees are valid for a period of 30 days only from the date upon which they are given, after which time the quotation shall automatically expire.
- 11.5 The price of the Services is exclusive of VAT or its equivalent and all other tax or duty which, if applicable, shall be payable by You in addition at the appropriate rate.
- 11.6 Net Primates reserves the right to demand payment on account in advance of providing any Services and unless otherwise specified in the Order may invoice in respect of work completed or to be carried out, before, during and after completion of such work as it sees fit. In the event you instruct us to renew a domain name registration you will be asked to make advance payment.
- 11.7 Invoices are payable within 30 days of the date of the invoice without deduction or set-off. Unpaid invoices shall attract interest at a rate of 4% above the base rate of Barclays Bank plc per annum without prior notice (such interest being payable both before and after any judgment may be obtained) and Net Primates reserves the right to suspend the Services until payment is made. Time for payment is of the essence. With regard to Fees that relate to the relevant fee for a domain name registration, You must make payment in full before your application can be accepted.
- 11.8 Where Services are provided prior to the relevant Fees being paid, Net Primates may retain the title in and ownership of all domain names registered on your behalf unless and until payment is made, and if such Fees are overdue Net Primates may deal with such names without restriction as if the full legal and beneficial owner.



## 12 Intellectual property rights and other consents

- 12.1 Net Primates retains ownership of all intellectual property rights in any information, reports, documents, software or other materials created by Net Primates as part of the Services, including all methodologies, know-how and processes used to do so (together, the "Materials"). Net Primates grants to You a limited licence to store and view the Materials delivered to You on your internal computer network. Unless done so strictly for your internal business use, the Materials may not be otherwise reproduced, transmitted, broadcast or displayed in public without Net Primates's prior written consent. All trade marks, product names and company names or logos used in our site are our property of that of their respective owners. No permission is given by us in respect of the use of any such trade marks, get-up, product names, company names, logos or titles and You acknowledge that such use may constitute an infringement of the holder's rights.
- 12.2 You are solely responsible for obtaining all intellectual property rights clearances and/or other consents and authorisations necessary in respect of the names, marks or other materials which are the object of the Services and You warrant that Net Primates use of such names, marks or materials and any other information, documents or software which You supply to Net Primates under this Agreement (together, the "Objects") shall not infringe any third party's intellectual property rights or be otherwise unlawful or illegal.
- 12.3 On becoming aware of any dispute between You and any other individual or organisation regarding the Objects, Net Primates reserves the right, at its sole discretion and without notice or liability to You, to cease any further use of such Objects including, without limitation, deleting or suspending them from its computer systems and/or to make appropriate representations or provide information to any relevant authority or interested party.

## 13 Liability

- 13.1 Whilst Net Primates shall use reasonable skill and care in the delivery of the Services You acknowledge that the delivery of the Services:
- (a) is subject to the inherent technical and operational limitations of the Internet, including, but not limited to, the lack of security and unreliability of its communications, the evolving nature of its organisational, legal and regulatory framework, and the potential inaccuracy and variable standards of its relevant data repositories, such as national domain name registries, and is therefore made without guarantee as to accuracy or completeness for which Net Primates shall have no liability to You or any third party;
  - (b) may, in whole or in part, be prohibited, restricted or otherwise subject to relevant third party contractual provisions, such as the terms and conditions of Internet naming authorities, for which Net Primates shall have no liability to You and You warrant that You shall ensure that You are made aware of, and comply with, such provisions.
- 13.2 We shall use reasonable endeavours to provide continuing availability of the Server and the Services but we shall not, in any event, be liable for Service interruptions or down time of the Server, except to the extent set out in the Service Level Agreement applicable to the Services you have ordered.
- 13.3 Net Primates shall not be liable for any delay or failure to perform its obligations under this Agreement where such delay or failure is due to circumstances beyond its reasonable control including, without limitation, any act or omission by You or providers of internet connectivity and other events of force majeure. Any time deadlines set out in the Order or otherwise agreed are estimates only.
- 13.4 All conditions, terms, representations (other than fraudulent representations) and warranties relating to the Services, whether implied by law or otherwise, which are not expressly stated in this Agreement including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are excluded to the fullest extent possible by law.

- 13.5 Net Primates's total aggregate liability to You for any claim in contract, tort, negligence or otherwise arising out of or in connection with this Agreement and the provision of the Services shall be limited to the price paid by You in respect of the Services which are the subject of any such claim and provided that You notify Net Primates of any such claim within one year of it arising. In no event shall Net Primates be liable to You for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.
- 13.6 The Services are provided by Net Primates for your exclusive use. Net Primates does not accept any liability or obligation towards any third party or generally towards any person and the Contract (Rights of Third Parties) Act 1999 shall not apply to the relationship between You and Net Primates

#### **14 Indemnity**

- 14.1 You agree to indemnify and keep indemnified and hold Net Primates and our directors, officers, employees and agents and the registry operator for .com, .net and .org domain names on demand harmless from and against any claim brought against Net Primates or them by a third party resulting from the provision of Services by Net Primates to You and/or your use of the Server and/or any domain name registered, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, whatsoever suffered and howsoever incurred by Net Primates or them in consequence of your breach or non-observance of these terms of business.

#### **15 Confidentiality and publicity**

- 15.1 Both You and Net Primates undertake not to disclose to a third party any confidential information which You or Net Primates receives relating to the contents or performance of this Agreement or the other's business in general, and shall procure that each of its directors and employees shall not do so, except with the prior consent in writing of the other, as required by law, or to the extent to which that information is publicly available or already known to the receiving party at the date of receipt other than through any unauthorised disclosure by any person.
- 15.2 Without prejudice to clause 14.1, Net Primates shall be entitled to mention your name as a client of Net Primates and the name(s) of products in respect of which Net Primates provides Services on publicity and promotional material on and off-line without your prior consent unless You send notice in writing to Net Primates (by email to info@netprimates.com) referencing this clause and requesting no publicity. Any request will only apply to publicity material to be prepared after such notice is given and Net Primates will be under no obligation to cease using material printed or published prior to such notice.

#### **16 Termination**

- 16.1 We may terminate this Agreement forthwith if You fail to pay any sums due to Net Primates as they fall due or if, in our reasonable opinion, You do not have sufficient technical expertise to use the service without excessive ongoing technical support.
- 16.2 We may terminate this Agreement upon written notice if You breach any of these terms and conditions and You fail to correct the breach within thirty (30) days following written notice from Net Primates specifying the breach, or if You are a company You go into insolvent liquidation, or if You are a person You are declared bankrupt.
- 16.3 Upon completion of the initial contract Term either party may terminate the agreement by each party giving to the other 90 days notice in writing. Any such termination or cancellation will be subject to the payment of any outstanding charges.

- 16.4 You acknowledge and agree that your domain name registration is subject to suspension, cancellation, transfer or modification pursuant to the terms of any rules or policies applicable to your domain name registration, including, but not limited to (i) the UDRP, (ii) any ICANN adopted policy, (iii) any registrar (including Net Primates) or registry administrator procedures, or (iv) any other ccTLD registry administrator procedures.
- 16.5 On termination of the Agreement we shall be entitled immediately to block your Web Site and to remove all data located on it. We will hold such data for a period of 14 days and allow You to collect it at your expense, failing which we shall be entitled to delete all such data. We shall further be entitled to post such notice in respect of the non-availability of your Web Site as we think fit.

## **17 Notices**

- 17.1 Any notice to be given by either party to the other may be sent by email, fax or recorded delivery to the address of the other party as appearing in this Agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

## **18 Law**

- 18.1 For the adjudication of disputes concerning or arising from use of the domain name, the domain name holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the domain name holder's domicile and (2) the courts of England.
- 18.2 Subject to clause 17.1 above:-  
(a) the Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its promotion) shall be governed by and construed in accordance with English law.  
(b) each of the parties to this Agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings and/or to settle any disputes which may arise out of or in connection with this Agreement and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.

## **19 Entire Agreement**

- 19.1 These Terms together with any Order and any document expressly referred to in them, contain the entire agreement between Net Primates relating to the subject matter covered and, save in case of fraudulent misrepresentation or fraudulent concealment, supersede any previous agreements, arrangements, undertakings or proposals, written or oral, between Net Primates in relation to such matters. We may alter these terms at any time without notification to You provided the current terms are always available on our website. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions.
- 19.2 You confirm that, in agreeing to these terms and conditions, You have not relied on any representation save insofar as the same has expressly in these terms and conditions been made a representation and You agree that You shall have no remedy in respect of any misrepresentation (other than a fraudulent misrepresentation) which has not become a term of this Agreement.

## 20 Miscellaneous

- 20.1 If any provision of this Agreement or part thereof shall be void for whatever reason, the offending words shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- 20.2 Your rights and obligations under this Agreement are personal to You and You undertake that You shall not nor purport to: assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.
- 20.3 Net Primates reserves the right to sub-contract any of the work required to fulfil the Services and to assign this Agreement upon notice to You.
- 20.4 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority
- 20.5 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.
- 20.6 Clause headings have been included in this Agreement for convenience only and shall not be considered part of, or be used in interpreting, this Agreement.