



## Section 1: Aspire Internet Limited (Aspire) Standard Terms and Conditions

### Clause 1.1 Definition of Terms

1.1.1 In this Agreement the following terms will have the following meanings:

**'Act'** means the 1984 Telecommunications Act; and

**'Acceptable Use Policy'** means an acceptable use policy (may also be referred to as General Usage Policy) posted on Aspire's website found at [www.Aspireinternet.co.uk](http://www.Aspireinternet.co.uk) from time to time applicable to all aspects of services provided by Aspire; and

**'Agreement'** means this document, and, where the context so requires, any Service Order, Application Form, contract, Acceptable Use Policy, Aspire's Price List and/or the Service Description; and

**'Apparatus'** means any telecommunications apparatus required for the provision of the Service and installed by or on behalf of Aspire (including by a sub-contractor) at the Customer's Premises; and

**'ASPIRECOM'** means Aspire's E-commerce package (site and commerce versions) products; and

**'Business Day'** means any day (other than Saturday, Sunday or English public holiday) on which the Banks in England are open for a full range of banking transactions; and

**'Aspire'** means Aspire Ltd of Heritage Exchange, Wellington Mills, Plover Road, Lindley, Huddersfield, HD3 3HR; and

**'Aspire System'** means the telecommunication and/ or Internet system run by Aspire Ltd and or its service providers; and

**'Aspire Equipment'** means any equipment that is supplied by or on behalf of Aspire to the Customer or installed at the Customer's Site for the purpose of providing the Service including Aspire's hardware, software, cables, and such other equipment supplied by Aspire, its agents or its sub-contractors for the provision of the Service which have not been purchased and paid for by the Customer; and

**'Aspire Software'** means the installation software and/or other software necessary to facilitate the use of the Service supplied by Aspire; and

**'Aspire Website'** means the website at <http://www.Aspireinternet.co.uk> or at such other URL as Aspire may determine from time to time; and

**'Charges'** means without limitation the Set-up Charge and the Service Charge and any other applicable Charges as outlined in the Aspire Price List; and

**'Customer'** means the person, firm, or company whose Application / Service Order is accepted by Aspire; and

**'Commencement'** means that point in time when the Customer's account is set-up on Aspire's internal provisioning system and hosting equipment configured to provide a Service to the Customer; and

**'Components'** means all components of the system within Aspire's and/or any third party's premises that provide dedicated Internet access to the Customer and which are necessary for the supply of the Service, but excludes the Customer's Equipment; and

**'Confirmation Letter'** means a letter or any other form of document issued by Aspire confirming and accepting the Customer's order for the Service.

**'Conditions'** means the standard terms and conditions for the Supply of Services set out or referred to on the Application / Service Order; and

**'Confidential Information'** means any and all information which relates to the business affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of either party or information which may reasonably be regarded as the confidential information of the disclosing party; and

**'Connectivity'** means the connection to the Internet using the dial-up telephone number, ADSL connection, or other connection to the Internet as specified by Aspire and informed to the Customer by Aspire from time to time; and

**'Contract'** or **'Service Contract'** means the related FM Server Contract, Leased Line Contract, Web Development Contract, Telco Contract or any other provision of Service as stated on the Application Form/ Service Order relating to the particular Services requested and Contracts shall be construed accordingly; and

**'Dial-Up Platform'** means the access number to be used by the Customer to connect to the Internet or to the Aspire account as specified by Aspire; and

**'Domain Name'** means the domain name requested by the Customer to be registered on the Customer's behalf as outlined on the Application or any alternative domain name offered by Aspire; and

**'Customer's Equipment'** means the telecommunications leased line and all equipment and facilities located at the Customer's premises including but not limited to Customer-owned routers (unless the Customer's orders a managed router service as part of the Service).

**'Customer's Website'** means the website belonging to the Customer which is hosted by Aspire pursuant to the Contract; and

**'Force Majeure'** means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, or happenings beyond its reasonable control. Including (but not limited to) wars, riots, embargoes, strikes, lockouts, acts of god, insurrection, or civil commotion or any other causes or circumstances beyond the parties reasonable control; and

**'Input Material'** means all materials, data, images, and information necessary for the Customer's use of the Service; and

**'Installation Date'** means the proposed installation date for the Service as defined in the relevant Service Order/ Application Form; and

**'Intellectual Property Rights'** means any current and future intellectual property rights including copyrights, trademarks, trade names, domain names, rights and logos, service marks, inventions, Confidential Information, trade secrets and know-how, design rights, patents, utility models, semiconductor topography, all rights of whatsoever nature in computer software and data, rights in databases, privacy rights; and all intangible rights and privileges of a nature similar, analogous or allied to any of the above existing anywhere throughout the world and all renewals, revivals and extensions of them and rights of action in respect of them howsoever including the right to sue for past

infringement and the right to apply for, prosecute and obtain patent, design right, trademark and other protection throughout the world or any invention claimed in any patent or patent application including the right to claim priority; and

**'Internet'** means the worldwide Transmission Control Protocol/Internet Protocol (TCP/IP) network formed of an interconnection of companies, organisations and institutions, private and public networks; and

**'Licence'** means any licence required for Aspire to provide the Service or to run Aspire's System; and

**'Name'** shall mean the name assigned to the Customer in relation to the provision of the Service including but not limited to any mailbox and domain names; and

**'Ofitel'** means Office of Telecommunications or the Director General of Telecommunications; and

**'Offending Material'** means any material, data, images or information (including without limitation, the Input Material) which is

- in breach of any law, regulation, code of practice or acceptable use policy; or
- abusive, indecent, defamatory, obscene or menacing or otherwise offensive; or
- in breach of confidence, copyright or other intellectual property rights, privacy or any other right of any third party; and

**'Order Form'** means the agreement or relevant order form or such other appropriate form for the Service issued by Aspire that the Customer completes and sends to Aspire; and

**'Package'** means any Aspire products bundled together.

**'Party'** means a party to the Contract and 'Parties' shall be construed accordingly; and

**'Personnel'** means the employees, agents or sub-contractors of the respective Party; and

**'Premises'** means any sites owned or occupied by the Customer at which the Service is, or will be, provided, as specified in a Service Order; and

**'Price List'** means the list of fees payable by the Customer in respect of the Services of which a copy can be requested from Aspire in writing to the address shown above; and

**'Processing'** means any use of messages or calls or data including sending, receiving, uploading, downloading and posting on web-sites or elsewhere; and

**'Protocols'** means the protocols and standards defined in the following Internet documents: RFC 009, RFC 1122, RFC 1123, RFC 1250 and any existing or future protocols and standards as appropriate; and

**'Registry'** means the relevant registry or naming authority responsible for the registration of domain names that includes (without limitation) Nominet UK and Network Solutions Inc.

**'Server'** means the server of certain specifications selected by the Customer in the Order Form and confirmed by Aspire Ltd in the Confirmation Letter.

**'Services'** means the Aspire service selected by the Customer in the Service Order; and

**'Service Charge'** means the Charges for the Service set out in the applicable Service Order, Service Description and/or in any Aspire price list as in force from time to time; and

**'Service start date'** means the date on which Aspire agrees to start providing Service as set out in the Service Order; and

**'Service Description'** means a Aspire document as in force from time to time which contains a description of the Service, and which may set out additional terms and conditions; and

**'Service Order'** means a Aspire Service Order / Application Form; and

**'Set-up Charge'** means Aspire's charge for setting-up the Service (including any installation charge) set out in the Service Order, Service Description and/or Aspire Price List as in force from time to time; and

**'Software'** means any device supplied by Aspire to support the usability of its services as used by the Customer;

**'Standard Charges'** means the standard charges for the Service as set out in the Order Form or otherwise as set out on Aspire's Website or in Aspire's brochures; and

**'Terms and Conditions'** means these terms and conditions including any Schedules hereto; and

**'Work'** means any work carried out by Aspire (or its sub-contractor(s)) at the Premises for the purpose of installing, maintaining, repairing, moving, replacing or removing any Apparatus in order to comply with any of its obligations under this Agreement.

1.1.2 References to Clauses are references to clauses in the Agreement.

1.1.3 Clause headings are for ease of reference and do not form part of nor shall they affect the interpretation of these Terms and Conditions.

1.1.4 References to each party include their permitted assigns and successors by operation of law.

1.1.5 A person who is not a party to a Contract has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any Term of these Terms and Conditions.

1.1.6 Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporated and in each case vice versa.

1.1.7 References to any statute, statutory provision or other enactment and any British or other standard include a reference to that statute, provision, enactment or standard as from time to time amended, extended or re-enacted.

1.1.8 The words 'include' or 'including' are to be construed without limiting the generality of any preceding words.

## Clause 1.2 Provision of Service

1.2.1 Aspire will provide the Service to the Customer in accordance with the provisions of this Agreement upon a Service Order or Application or Contract having been duly signed by the Customer and returned to Aspire and subject to the further provisions of this Agreement.

1.2.2 The Customer may request Aspire to supply Service to the Customer by completing and forwarding an Application to Aspire or by submitting an online Application via Aspire's website. Aspire, in its absolute discretion, may accept the Customer request by processing the request including the raising of an invoice (pro-forma or otherwise) for services.

1.2.3 Aspire will endeavour to provide the Service in a timely manner but (in particular where Aspire are dependent on another operator to provide the Service and/or due to technical reasons) cannot guarantee to do so, and Aspire

will have no liability for any failure to meet such date.

1.2.4 The Customer acknowledges that the fees paid for any Aspire hosting package are allocated to the acquisition of the domain name as registered with the appropriate Registrar and that all other services, as delivered as part of that initial hosting package, are deemed to be provided free of charge. The Customer further acknowledges that once the acquisition of this domain name has occurred as outlined on the Service Order Aspire is deemed to have fully executed its contractual obligations to the Customer.

1.2.5 Aspire possesses the right to change service providers at any time without consulting the Customer and the Customer empowers Aspire to act as its agent and have full authority to select, change or remove sub agents when deemed necessary.

1.2.6 Aspire shall provide the Services using all reasonable care and skill subject to payment by the Customer of all amounts payable hereunder on the dates specified herein or on the Application.

1.2.7 The Customer accepts that Aspire reserves the right to subject the Customer to a credit check and has sole discretion over whether or not the Customer may utilise Aspire's services based on the results of that check. The Customer also accepts that if the credit check does not meet Aspire's requirements, whatsoever they may be at the time, that Aspire may request the Customer to pay annual in advance or a deposit in line with the estimated annual charges that the Customer may incur by using the service. The Customer accepts that this credit check may impact their credit rating and that this information may be shared with other related companies or subcontractors from time to time.

1.2.8 The Customer acknowledges that Aspire cannot provide advice or technical support for any aspect of the Customer's own network and therefore the Customer acknowledges that costs may be incurred by the Customer for any technical consultation provided by a third party enabling the compatibility of the Customer's own network to work to specification with the services as provided by Aspire as outlined on the Service Order.

1.2.9 The Customer shall do all things and provide all such information as is reasonably required by Aspire to provide the Services in accordance with these Terms and Conditions.

### **Clause 1.3 Payment and Term**

1.3.1 Any agreement shall commence on the date of acceptance by Aspire of the Application submitted by the Customer and shall be paid on an annual basis for an initial contract period of two-years (unless otherwise specified) and annually thereafter, unless and until terminated by either party by providing 60 days written notice with no termination earlier than the end of the initial contract period or annual renewal period.

1.3.2 The fees payable to Aspire in respect of the Services are specified in the Aspire Price List. If a credit card or debit card is on file with Aspire, the Customer acknowledges that Aspire will automatically take payment via that device 14 days from the date of invoice. If payment is not received via this process (i.e.: credit card or debit card is no longer valid, credit card or debit card has expired, etc.) Aspire will inform the Customer via fax or letter and the Customer acknowledges that the invoice (pro-forma or otherwise) is to be paid by other means and that Aspire reserves the right to pursue any outstanding invoice (pro-forma or otherwise) through the appropriate legal channels.

1.3.3 All Charges are due in advance (whether disputed or not) or within 14 days of invoice (unless specified otherwise in the application or on the invoice.) The Customer acknowledges that Aspire reserves the right to suspend the customer's entire account in the event of non-payment for any overdue invoice (pro-forma or otherwise.)

1.3.4 The Customer may be required to pay for Services by Direct Debit or Credit Card on a non-invoiced basis. Aspire will notify the Customer if this is the case.

1.3.5 All Charges are exclusive of VAT and any other applicable purchase tax, import, and all other duties. Any failure by the Customer to pay any fees due under these Terms and Conditions on the date specified shall be deemed to be a 'material breach' of these Terms and Conditions.

1.3.6 In the event of a material breach as described above, Aspire's normal terms for collection of payment apply. If the Customer chooses to pay by direct debit, and if, for any reason, the Customer's direct debit fails or mandate is cancelled and Aspire cannot take payment, the Customer agrees to make the payment in full by an alternative method within 5 days. If payment is made within this time period, the Customer can continue to pay via direct debit though, if payment is not made with in this five day period, Aspire retains the right to pursue payment through its normal processes and retract the Customer's right to pay by direct debit in the future.

1.3.7 The Customer acknowledges that he shall provide Aspire with such amount in cash or by way of guarantee as Aspire may specify from time to time as a non-refundable payment of Charges for the remaining balance on the Contract. If the deposit is not provided within seven days of request, Aspire will have the right to disconnect the Service. Interest is not payable by Aspire on deposits.

1.3.8 If the Customer is overdue with any payments hereunder, then without prejudice to Aspire's other rights and remedies, the Customer shall be liable to pay to Aspire a flat fee of £18 for each correspondence, Aspire's solicitors and court fees, as well as interest on the amount payable at an annual rate of 5% above the prevailing base rate of The Bank of England, which interest shall accrue on a daily basis from the date payment becomes overdue until Aspire has received payment of the overdue amount together with all interest.

1.3.9 Should the Customer choose to pay for any ongoing fees by Direct Debit, the completed Direct Debit form must be returned to Aspire within 28 days. In the event of the Customer failing to return a completed direct debit mandate, Aspire reserves the right to withdraw any discounts that may have been offered and invoice (pro-forma or otherwise) for the annual premium immediately. This invoice (pro-forma or otherwise) will then be payable within 14 days by other means.

1.3.10 The Customer accepts that if any services provided by Aspire are disconnected because of non-payment or because of any breach of contract or Acceptance of Use Policies, Aspire has the right to charge the Customer a reconnection fee equal to one month's fees with a minimum payment of £55 plus VAT for each reconnection unless specifically stated otherwise in these terms and conditions.

1.3.11 The Customer acknowledges responsibility for informing Aspire of all billing address changes and any changes relating to the Customer's ability to be contacted and further confirms that Aspire must be informed of any changes on the account including but not limited to address changes or contact person changes and that Aspire possesses the right to charge a £15 administration fee per change and that Aspire will not be held responsible for any disruption or lack of service which result from a lack of notification by Customer to Aspire regarding such changes

## **Clause 1.4 Customer's Obligations**

1.4.1 The Customer shall:

1.4.1.1 supply Aspire with such information as Aspire or its sub-contractor may reasonably request in order to carry out any Work; and

1.4.1.2 grant or procure so that Aspire or its sub-contractor are granted all necessary authority at all reasonable times and on reasonable notice (except in the case of an emergency) to carry out the Work and install, keep, and maintain any Apparatus at the Premises; and

1.4.1.3 in the case of an emergency grant or procure that Aspire or its sub-contractor is granted all necessary authority to enter the Premises immediately and without notice; and

1.4.1.4 provide appropriate space, ducting, suitable and safe working environment and electrical power for Aspire or its subcontractor to install and maintain the Apparatus at the Premises at no cost; and

1.4.1.5 not alter, adjust, or interfere with the Apparatus or allow any of Customer employees or agents to do so; and

1.4.1.6 ensure that the Apparatus is kept safe and not interfered with by any third party.

## **Clause 1.5 Warranties**

1.5.1 In performing Aspire's duties under this Agreement, Aspire shall, at all times use its reasonable endeavours to exercise reasonable care of a competent Internet Service Provider (ISP) or, as applicable, telecommunications operator. The Customer acknowledges that neither Aspire, nor any other party, has control over the Internet and service interruptions may occur due to circumstances beyond or at times within Aspire's reasonable control such as internal and/or external system malfunctions or failures of third parties. The Customer therefore acknowledges that Aspire shall not be held liable in any way for losses as a result of such service interruptions regardless of their nature.

1.5.2 The Customer further acknowledges that Aspire shall in no way be held liable for any service outage or disruption that occurs as a result of any of Aspire's suppliers' failure to provide a service. For clarification, if any of Aspire's suppliers enters administration, liquidation, is wound up or for any reason fails to provide a service to Aspire that impacts the Customer, Aspire shall not be held liable. In the event Aspire selects an alternative supplier in order to restore the service to the Customer, the Customer acknowledges that any increase in the costs to Aspire as a result of the supplier change will be passed on to the Customer.

1.5.3 The Customer acknowledges that Aspire offers a Reseller program for Customer's that purchase Aspire packages on behalf of an end user. The Customer further acknowledges that the Customer is responsible for all domain names and packages purchased on behalf of a third party, and if not purchased through the Reseller program as offered by Aspire, Aspire will not be held liable for any implications resulting from Aspire's effort to contact the Customer at the contact details held on the account within Aspire's system through domain names held on the Customer's account.

1.5.4 The Customer acknowledges that it is not possible for Aspire to provide a 100% fault-free Service. Aspire expressly reserves the right to disconnect availability of Internet access for the purpose of necessary or scheduled maintenance. Access e-mail may also be adversely affected by conditions and performances outside Aspire's control including without limitation the breakdown of transmission and telecommunication links or provisions of services by Aspire's selected service providers. Sometimes Aspire will need to suspend the Service for maintenance, scheduled or unscheduled. While Aspire will try to maintain the Service 24 hours a day, seven days a week, Aspire cannot guarantee to do so. Aspire will always try to repair reported faults and/or restore the Service as soon as reasonably practical.

1.5.5 The Customer warrants to Aspire that the Customer has obtained and will maintain all such approvals, way leaves, and licences as may be necessary to perform Aspire's obligations under this Agreement or to allow Aspire to do so and that the Customer will comply generally with all applicable laws and regulations.

1.5.6 No other warranties or representations, expressed or implied, are given by either party under this Agreement and any implied warranties are expressly excluded.

1.5.7 The Customer warrants that it will comply with the provisions of the end-user licence relating to all aspects of Services in which an Application has been provisioned.

1.5.8 The Customer warrants that it will comply in every respect with the provisions of Aspire's General Usage Policy.

## **Clause 1.6 Term and Termination**

1.6.1 This Agreement may be terminated by either party by providing 60 days written notice with no termination earlier than the initial contract period or annual renewal period.

1.6.2 If the Customer terminates this Agreement during the initial period of two-years, other than because Aspire has increased its Charges or materially changed the terms of this Agreement to the Customer's detriment, or if the Agreement is terminated by Aspire under 1.6.3 below, the Customer must pay Aspire the applicable Charges for the remainder of the initial contract period.

1.6.3 Either party may terminate this Agreement or the Service provided under it forthwith by notice to the other if:

1.6.3.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or

1.6.3.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances; or

1.6.3.3 the other fails to pay any Charges when due; or

1.6.3.4 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court makes an order to that effect; or

1.6.3.5 the other party ceases to carry on its business or substantially the whole of its business; or

1.6.3.6 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrator, administrative receiver,

manager, trustee or similar officer is appointed over any of its assets; or  
1.6.3.7 the bandwidth used for traffic to and from the web site is exceeded beyond Aspire's considered acceptable use and is deemed by Aspire to affect the performance of other Customers' Business Websites. Notwithstanding any other remedies it may have under these Terms and Conditions or in law, Aspire, in the event that the acceptable bandwidth is exceeded, may elect to charge the Customer an additional monthly fee as set out in the Aspire Price List or Service Order.

1.6.4 If any of the events detailed above occur as a result of Aspire's default, Aspire may by giving notice to the Customer to disconnect the Service or any part of it without prejudice to Aspire's right to terminate this Agreement. Where the Service or any part of it is disconnected under this paragraph, the Customer must pay the Charges for the Service until this Agreement is terminated.

1.6.5 Any rights to terminate this Agreement shall be without prejudice to any other accrued rights.

1.6.6 On termination of this Agreement for any reason:

1.6.6.1 Aspire shall have the right immediately to remove any Apparatus from the Premises; and

1.6.6.2 all amounts owing for the Service shall be due and payable in full on demand whether or not then due and Customer shall have no right to withhold or set off such amounts; and

1.6.6.3 Aspire may delete all e-mail, Websites, and other data stored on the Service by the Customer and re-use the e-mail addresses, domain names not held by the Customer and subject to Clause 1.6.6.4, and Web-spaces. Aspire shall not exercise this right for six weeks in the case of termination by Aspire other than for breach by Customer; and

1.6.6.4 Aspire shall transfer any domain names held by the Customer to another ISP at a Charge as specified in the Aspire Price List.

#### **Clause 1.7 Consequences of Termination**

1.7.1 Upon the termination of any Agreement for any reason whatsoever:

1.7.1.1 the Customer shall promptly return to Aspire all copies of the Software in his possession; and

1.7.1.2 Aspire may cease to host the Web Site with immediate effect; and

1.7.1.3 each party shall on request promptly return any documents or papers relating to the business of the other party (including any of the other party's Confidential Information) which it then has in its possession or control.

#### **Clause 1.8 Renewal**

1.8.1 Aspire will automatically renew the Customer's contract each year after the initial one-year contract period unless the Customer notifies Aspire in writing at least 60 days prior to the end of the contract period instructing Aspire to do otherwise.

1.8.2 The Customer acknowledges in the event Aspire is not informed at least 60 days prior to the end of the contract period of the Customer's wishes not to renew, Aspire will automatically raise and forward an Invoice (pro-forma or otherwise) to the Customer for the renewal for a further year. If a credit card or debit card is on file with Aspire, the Customer acknowledges that Aspire will automatically take payment via that device 14 days from the date of invoice.

1.8.3 If payment is not received via this process (i.e.: credit card or debit card is no longer valid, credit card or debit card has expired, etc.) prior to the end of the contract period, Aspire will inform the Customer via fax or letter and the Customer acknowledges that the invoice (pro-forma or otherwise) is to be paid prior to the end of the contract period and that Aspire reserves the right to pursue any outstanding invoice (pro-forma or otherwise) through the appropriate legal channels.

1.8.4 Aspire will use its reasonable endeavours to ensure that the Domain Name, Existing Domain Name, Internet Keyword or any other Aspire product will be automatically renewed after expiry of the initial or any subsequent two year registration period provided always that this Agreement remains in force up to the date of expiry of such period.

1.8.5 In consideration for renewal of the Aspire package by Aspire and prior to the renewal date, the Customer shall pay to Aspire the annual renewal fee set out in the Price List.

1.8.6 Whilst Aspire will use all reasonable endeavours to ensure that the Domain Name, Existing Domain Name or any other Aspire product is renewed at the relevant renewal date, the Customer acknowledges that it is not possible for Aspire to guarantee such renewal and that Aspire shall not be liable for any failure to renew the Domain Name or the Existing Domain Name.

1.8.7 The Customer acknowledges that in the event the Customer fails to remit payment or fails to instruct Aspire not to renew the Aspire package, Aspire reserves the right to renew the Domain Name or any associated Domain Names under its own IPS tag and reserves the right to change the Admin, Technical and Billing contacts to a Aspire representative and that Aspire will, at that point, become the rightful owner of the Domain Name.

1.8.8 The Customer also acknowledges that in the event the Customer fails to remit payment or fails to instruct Aspire not to renew the Aspire package, Aspire reserves the right to offer an alternative domain name to the Customer if payment is received during Aspire's debt recovery process.

#### **Clause 1.9 Confidentiality**

1.9.1 The Customer shall ensure that its employees, agents, and sub-contractors shall, keep confidential and not, without Aspire's prior written consent, use or disclose to any third party any material or information relating to the Agreement and/or Aspire's business which the Customer may acquire in the course of or in accordance with the Agreement.

1.9.2 Nothing in Clause 1.9.1 will be taken to prevent the Customer from disclosing any information:

1.9.2.1 in Customer's possession (with full right to disclose) before disclosed by Aspire; or

1.9.2.2 which is or becomes public knowledge other than by breach of this clause; or

1.9.2.3 which the Customer may independently develop or receive from a third party (with full right to disclose)

1.9.3 Aspire reserves the right (but does not assume the obligation) to inspect any material which the Customer processes using the Service to ensure Aspire's compliance with the Agreement and any legal requirements.

1.9.4 The Customer and Aspire may disclose such material if requested or required to do so by the police or any other competent authority.

1.9.5 If requested to do so by a third party Aspire may disclose such material during the course of an action for the infringement of their rights which Aspire reasonably believes to arise from the Customer's use of the Service. Aspire may modify or remove any material that infringes this Agreement.

1.9.6 The Customer hereby agrees that Aspire may record or monitor the Customer's calls to Aspire for quality and contractual purposes.

1.9.7 Where the Customer uses the Service to post material on a Web Site (including chat-rooms and other facilities), the Customer grants to Aspire and its licensors and assigns a royalty-free, irrevocable licence to use, edit, copy,

republish and distribute such material through the Service (for any purpose.) Aspire may remove any material that appears on any page of Aspire's own Web Site.

1.9.8 All information, drawings, specification, documents, contracts, design material and all other data, which either party may have disclosed and may from time to time disclose to the other party relating to its business, Customers, prices, services, requirements, the Software, the Web Site, the Services and these Terms and Conditions, including any technical specifications (the 'Confidential Information'), are proprietary and confidential to the disclosing party.

#### **Clause 1.10 Cancellations**

1.10.1 The Customer understands that there is no cancellation policy in place meaning that, from the time the Customer submits the signed Service Order to Aspire, the Customer waives any right to cancel the services purchased unless specified otherwise within this document.

#### **Clause 1.11 Force Majeure**

1.11.1 Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control (an 'event of force majeure'), provided the same arises without the fault or negligence of such party and the affected party notifies the other party within two (2) working days of becoming aware of the same of such event of force majeure and the manner and extent to which its obligations are likely to be prevented or delayed, and provided also that the occurrence of any such event of force majeure shall not have the effect of discharging or postponing the affected party's payment obligations hereunder.

1.11.2 If any event of force majeure occurs, the date(s) for performance of the obligation(s) affected shall be postponed for so long as is made necessary by the event of force majeure provided that if any event of force majeure continues for a period of or exceeding 60 days, the non-affected party shall have the right to terminate any agreement governed by these Terms and Conditions forthwith on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any event of force majeure

#### **Clause 1.12 Data Protection**

1.12.1 Unless indicated otherwise on the relevant Application/ Service Order form, the Customer hereby agrees to allow Aspire to collect and process data and information regarding the Customer's use of the Service and to provide this to sub-contractors and/or companies affiliated with Aspire for the purposes of marketing Aspire's (or Aspire's affiliated companies') services, or other related services, or for any other purpose connected with the Agreement. In particular, but without limitation, if the Service is provided to the Customer following a third party referral, the Customer agrees that Aspire may provide them with such reasonable information as they request regarding the installation of the Service and Aspire's provision of the same to the Customer. Aspire will provide the Customer on request with details of all such information held by Aspire, and will modify any information that the Customer advises is incorrect.

1.12.2 Subject to and in accordance with relevant data protection legislation, the Customer hereby consents to allow Aspire to collect data regarding Aspire's use of the Services and to provide such data to any governmental or regulatory body for the purpose of Aspire's compliance with any applicable laws and regulations.

1.12.3 Each party shall for the duration of any Agreement governed by these Terms and Conditions comply with the provisions of the Data Protection Act 1998, (including the data protection principles set out in that Act) and any similar or analogous laws, regulatory requirements or codes of practice governing the use, storage or transmission of personal data and shall not permit anything to be done which might cause or otherwise result in a breach by either party of the same.

1.12.4 Aspire possesses the right to communicate with the Customer regularly via, but not limited to, electronic means.

1.12.5 Aspire may, from time to time, send Customer information relating to the services of other companies that Aspire feels may be of interest to the Customer. If the Customer does not want to receive such information, it must inform Aspire in writing.

1.12.6 Aspire has the right to deny Customer Support to the Customer if the Customer fails to demonstrate to the Aspire representative upon receipt of a phone call or e-mail by Aspire that they are indeed the Customer and therefore authorised to request that changes be made on the account. The Customer acknowledges that it may not always be possible for Aspire to guarantee that breaches will not occur and therefore agrees to cooperate with Aspire staff in its requests for Customer authentication.

#### **Clause 1.13 Liability**

1.13.1 Nothing in this Agreement shall restrict or exclude either party's liability for fraud, death or personal injury.

1.13.2 The Customer shall not be entitled to any liquidated compensation or refund payments for unavailability of or interruptions to the Service.

1.13.3 Aspire shall not be liable to the Customer nor to any third party under this Agreement in contract, tort or otherwise for any direct or indirect loss of profit, anticipated savings, business, contracts, revenue, time, goodwill or loss of or harm to data or other content or for any other indirect or consequential loss.

1.13.4 Aspire shall not be liable in respect of any goods or services purchased or obtained or any transactions entered into by the Customer through the Service with third parties. Further Aspire shall have no liability to the Customer in respect of any third party Internet criminal activity (including without limitation as a result of computer 'hackers') or in respect of billing, payment, or other information that passes between Aspire over the Internet (including by e-mail) in relation to the provision of the Service.

1.13.5 The Customer acknowledges that Aspire shall not be liable to the Customer in respect of any loss or damage arising from the Customers use of or reliance upon any advice or information provided by Aspire's Customer Services or Technical Department .

1.13.6 Subject to the other provisions of this Clause, any liability Aspire may have to the Customer in contract, tort, or otherwise in connection with the supply or non-supply of the Services and this Agreement shall be limited in each calendar year to damages equal to the Charges paid by the Customer in that calendar year.

#### **Clause 1.14 Data Backup**

1.14.1 Whilst Aspire shall use its reasonable endeavours to ensure that backup copies of the Customer's Web Site and all Customer data contained in the Web Site are made at reasonable intervals, the Customer shall be solely responsible for the backup of such data and Aspire shall not be liable for any damages, loss, costs or other expenses arising out of or in connection with any loss of data by the Customer which are due to the failure of the Customer or Aspire to back up such data.

#### **Clause 1.15 General Usage Policy**

1.15.1 The Customer agrees to adhere to Aspire's General Use Policy so as to ensure a safe, functional, and trusted

environment for Aspire Customers to publish their information on the Web and will comply with all parts of this clause as well as with the Acceptable Use Policy as found at [www.Aspireinternet.co.uk](http://www.Aspireinternet.co.uk)

1.15.2 The parties acknowledge and agree that the Customer shall have full editorial control over the contents of the Web Site and the Customer warrants that the Web Site (including where the Customer engages in any form of electronic communication through a discussion forum, via the Web Site or otherwise with any end-user) shall not:

1.15.2.1 be in breach of the laws of England and Wales or the country of establishment of the Customer or any end-user of the Web Site, or any international conventions, codes or regulations applicable to the Internet including but not limited to infringement of copyright and other Intellectual Property Rights, defamation, theft, fraud, drug-trafficking, money laundering and terrorism; or

1.15.2.2 promote sexually explicit materials; or

1.15.2.3 promote violence, sadism, cruelty or incite racial hatred; or

1.15.2.4 include any defamatory material; or

1.15.2.5 include any obscene or inflammatory language; or

1.15.2.6 promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; or

1.15.2.7 promote illegal activity.

1.15.3 The Customer shall indemnify and keep Aspire indemnified against all proceedings, losses, liabilities, damages (including legal costs), Charges and expenses of whatsoever nature arising out of or in connection with any action or claim that the content of the Web Site violates the provisions noted above.

1.15.4 Customers in breach of this policy will be contacted by Aspire and given the opportunity to remove the content in question before having services suspended. The Customer accepts that repeated infractions may cause the cancellation of service without refund of any fees.

1.15.5 The Customer agrees to comply with all applicable legal and regulatory requirements and any applicable licence; and

1.15.5.1 not use the Service in a way which could cause it to be interrupted, damaged or otherwise impaired or which violates Aspire's rights (including intellectual property rights) or those of any third party (including copyright, confidence, privacy or other rights); and

1.15.5.2 not knowingly intercept or attempt to intercept any message that passes over Aspire's System or attempt to access any unauthorised component of the Service; and

1.15.5.3 only connect to Aspire's System or the Apparatus, telecommunications equipment that is approved for use by Aspire and complies with all relevant legislation, standards, and licence requirements; and

1.15.5.4 comply with all reasonable instructions Aspire gives the Customer relating to the use of Aspire's System or Apparatus; and

1.15.5.5 pay the applicable Charges as set out in the Service Order or Applications and comply with any additional obligations specified in the Service Description, Service Order or any applicable Acceptable Use Policy.

1.15.6 Aspire does not support unsolicited e-mail messages sent by users of Aspire's system (also known as junk e-mail or SPAM) other than to the Customer's own Customers. Users sending unsolicited e-mail messages from Aspire's system or posting SPAM in Usenet Newsgroups will have all services temporarily suspended. The Customer will then be contacted by Aspire and informed of the suspension before having services reinstated. The Customer accepts that repeated infractions may cause the cancellation of service without refund of any fees.

1.15.7 The Customer agrees to access Aspire's services using its published fully qualified domain name (FQDN - e.g. [smtplib@aspireinternet.co.uk](mailto:smtplib@aspireinternet.co.uk)) and not the underlying IP address and acknowledges that Aspire reserves the right to change the underlying IP address of any of its services without prior notice.

1.15.8 Aspire may, at its sole discretion, run manual or automatic systems to check compliance with these Terms and Conditions. The Customer acknowledges that these checks may include, but are not limited to, scanning for open mail relays, smurf amplifiers and insecure formmail scripts. By accessing the Internet via Aspire's services, the Customer is deemed to have granted permission for these checks.

1.15.9 The Customer is required to accept e-mail addressed to 'postmaster' at the Customer's e-mail address utilising the domain name(s) on the Customer's account. For example, if the Customer has the domain name 'myco.co.uk', then the Customer shall accept and read all e-mail addressed to [postmaster@myco.co.uk](mailto:postmaster@myco.co.uk). The Customer will be deemed to have read any and all such postmaster-addressed e-mail. The Customer acknowledges that Aspire may take action on the basis of this assumption that may impact the Customer's account.

#### **Clause 1.16 Intellectual Property Rights**

1.16.1 The Customer agrees and acknowledges that the copyright and any other intellectual property rights in the Software, the E-Tutor, and the Customer Web Site shall be owned by Aspire except that the intellectual property rights in any material proprietary to the Customer or any third party (the 'Content') which has been incorporated into the Web Site by the Customer shall be owned by the Customer or the relevant third party respectively.

1.16.2 Subject to the exceptions set out in Clause 16.1 the Customer hereby assigns to Aspire for the sum of £1 (receipt of which is hereby acknowledged) the whole of the Customer's present and future right, title and interest in the Intellectual Property Rights to the Web Site.

1.16.3 Each party agrees to execute any additional documents reasonably necessary to effect and evidence the other party's rights under Clauses 1.16.1 and 1.16.2 (at such other party's request) and not to do or omit to do any act that would or might prejudice the other party's rights.

1.16.4 The Customer warrants that it has obtained for itself and for Aspire all necessary consents, approvals and licences for use of the Content in the Customer web site.

1.16.5 In the event that the use of the Content infringes the intellectual property rights of any third party, the Customer will immediately replace the infringing part at its own expense with non-infringing material.

1.16.6 The Customer agrees to indemnify and keep Aspire indemnified and defend it at its own expense from and against:

1.16.6.1 any and all claims that the Content or any act or omission by the Customer, its employees, agents and representatives infringes any copyright, trademark or other intellectual property rights of any third party; and

1.16.6.2 any infringement by the Customer, its employees, agents and representatives of Aspire's intellectual property rights howsoever arising and shall compensate Aspire for any loss, damages and other expenses arising out of or in connection with such infringement.

#### **Clause 1.17 Suspension of Services**

1.17.1 Aspire may disconnect the provision of Service without liability on its part, and with as much prior notice as reasonably possible (except in the case of paragraph (a) below in which case Aspire may do so without prior notice:) (a) if necessary for operational reasons or for the purposes of carrying out Work at the Premises or maintaining or

upgrading the Service or Aspire's System; or  
(b) if obliged to comply with an order, instruction, or request of an emergency service organisation or a governmental or other competent authority.

#### **Clause 1.18 Notices**

1.18.1 Except as expressly stated herein to the contrary, all notices and other communications required or permitted to be given under these terms and conditions shall be in writing and shall be delivered or transmitted to the intended recipient's address as specified above or such other address as either party may notify to the other for this purpose from time to time. Any notice shall be treated as having been served on delivery if delivered by hand, two working days after posting if sent by pre-paid registered mail, on delivery if sent by courier and on confirmation of transmission if sent by facsimile. For the avoidance of doubt, notice under these Terms and Conditions shall not be validly served if sent by E-mail. This clause does not affect the responsibility of the Customer to regularly review Aspire's website for any alterations/amendments to the terms and conditions which would be binding on the customer

#### **Clause 1.19 Variation**

1.19.1 Except as explicitly stated in this Agreement, the terms of the Agreement may only be changed or modified by Aspire on behalf of both parties. Aspire may change the technical specification of the Service at any time, provided this does not detrimentally affect its performance.

1.19.2 The Customer accepts the obligation to review these terms and conditions every two weeks and, unless Aspire is informed in writing otherwise, the Customer accepts that as part of the Agreement, the revised terms and conditions will indeed supersede, in whole or in part thereof, the previous terms and conditions deeming the revised terms and conditions to be in force until the end the contract period.

1.19.3 Aspire may amend this Agreement at any time, with immediate effect, in order to comply with any law, regulation or ruling of Ofcom or any other Governmental or regulatory body.

#### **Clause 1.20 Indemnity**

1.20.1 Customer shall indemnify Aspire against all third party claims and losses, liabilities, costs and expenses (including without limitation reasonable legal expenses) that Aspire may incur as a result of any breach of Aspire's obligations under this Agreement or misuse of the Services (whether by Customer or not) provided that this indemnity shall not apply to the extent that any claim or part of a Claim directly results from any wrongful or negligent acts or omissions by Aspire.

#### **Clause 1.21 Rights of Third Parties**

1.21.1 Except as expressly provided to the contrary, a person ('third party') who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement notwithstanding that any such provision may purport to confer or may be construed as conferring a benefit on such third party. This does not affect any right or remedy of any such third party that exists or is available apart from that Act.

1.21.2 For the avoidance of doubt, Aspire may and shall, as it deems fit, sub-contract part or all of its obligations under these Terms and Conditions.

#### **Clause 1.22 Severability**

1.22.1 Should any provision of this Agreement be held by any competent court or authority to be invalid or unenforceable such provision shall (without prejudice to the remaining provisions) have no effect but the parties shall use all reasonable endeavours to replace the invalid or unenforceable provision by a valid provision, the effect of which shall be as close as possible to the intended effect of the invalid or unenforceable provision.

#### **Clause 1.23 Waiver**

1.23.1 Failure or delay by either party to enforce any of its rights under this Agreement shall not be deemed to be a waiver of any such right nor prevent that party from exercising or enforcing that same right or any other right on a later occasion.

#### **Clause 1.24 General**

1.24.1 These Terms and Conditions contain all the terms agreed between the parties regarding its subject matter and supersede any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to any agreement governed by these Terms and Conditions except as expressly stated in these Terms and Conditions. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into any Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in these Terms and Conditions.

1.24.2 Provisions of these Terms and Conditions that either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such termination.

1.24.3 The relationship of the parties is that of independent contractors dealing at arm's length. Except as otherwise stated in these Terms and Conditions, nothing in these Terms and Conditions shall constitute the parties as associates, joint ventures or co-owners, or constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as having authority to do the same.

1.24.4 The parties shall at the requesting party's reasonable expense do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by these Terms and Conditions.

1.24.5 Aspire may make alterations to these Terms and Conditions at any time without warning to the Customer.

#### **Clause 1.25 Assignment**

1.25.1 Aspire may assign or otherwise transfer this Agreement at any time. Customer may not assign or otherwise transfer this Agreement or any part of it without Aspire's written consent.

#### **Clause 1.26 Law and Jurisdiction**

1.26.1 The construction, validity, and performance of these Terms and Conditions shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts to resolve any dispute between them.

#### **Clause 1.27 Entire Document**

1.27.1 This Agreement and any documents referred to herein contain the entire understanding of the parties relating to the subject matter of this Agreement.

## Clause 2.1 Dial-up

2.1.1 The Customer agrees to access the Customer's account via the designated Aspire dial-up number as specified by Aspire that is subject to change at Aspire's discretion.

2.1.2 Any updates and/or amendments to the Web Site or retrieval of e-mail shall be made by the Customer using the Software by accessing the Web Site on Aspire's website server via the Dial-Up Connection. In the event that the Web Site is accessed, updated or amended, or retrieval of e-mail facilitated in any other way than via the Dial-Up Connection the Customer shall pay to Aspire the fee specified in the Aspire Price List.

## Clause 2.3 ADSL, DSL and Leased Lines.

2.3.1 The customer acknowledges that there are no cancellations once an order has been received and accepted by Aspire.

2.3.2 The full cost of any additional work that has been specifically incurred for the Service by the time of cancellation will be recovered in addition to the cancellation charge. In the event Aspire fails to meet the Service start date and the Customer decides to cancel the Service, a charge will not be raised. Aspire will use all reasonable endeavours to install the Service in accordance with the Installation Date but any such date is provisional and maybe subject to alteration. If the Customer requests amendments to the Service start date and subsequently cancels the Service, the cancellation charge will be amended so as to cover the full extent of Aspire's losses.

2.3.3 Further miscellaneous Charges may be applied in connection with the provision of the Service and/or repair of the Customer's data paths as follows:

2.3.3.1 where an internal shift of the Customer's line is required, a charge of £75.00 will be imposed; or

2.3.3.2 where an external shift of the Customer's line is requested, this will be charged as a new connection; or

2.3.3.3 a visit charge applies where Aspire or Aspire's sub-contractor visits the Customer's premises during normal working hours in connection with the Service, and a charge for the particular product or service has not been included in the price of the Service. If more than one visit is required, a single charge is made for each person visiting on each occasion. A visit charge will not apply where a visit is made for the purpose of removing rented Apparatus; or

2.3.3.4 an abortive visit charge of £150.00 (per attendance) where,

- Aspire or its sub-contractor attends an incorrect address provided by the Customer,
- the Premises for installation does not meet the criteria defined by Aspire or its sub-contractor as requirements for installing the Service e.g. minimum space, availability of power etc.,
- the Customer has not agreed to take Service at the appointed time as agreed between Aspire and the Customer, or
- the Customer has not agreed to or is unavailable for a maintenance or other

agreed visit at the appointed time agreed between the Customer and Aspire; or

2.3.3.5 a reworking charge where an engineer at the Customer's Premises has to make good any existing non-BT installed wiring to make it fit for installation. Such work will only be undertaken with the Customer's consent and where undertaken by Aspire's sub-contractor, the sub-contractor's timescale rates will apply. Where undertaken by Aspire, the Customer will be notified of Aspire's rates.

2.3.4 The Customer acknowledges that the provision of ADSL, DSL, Leased Lines, or other services per this Service Order is for one-year and the Customer further confirms that other aspects of Aspire's provision (such as but not limited to hosting etc.) are per the contract terms as outlined earlier within these terms and conditions and that the Customer shall pay all charges, the VAT, and any additional taxes as set out on the Service Order/ Invoice (pro-forma or otherwise) and agrees to all guidelines of payment as set out in Clause 1.3. The Customer also acknowledges that all Leased Line service cancellations must be made in writing and served via Registered Post to Aspire at least 90 days prior to the date of cessation as requested by the Customer with no cancellation earlier than the initial 12 month contract period.

2.3.5 The Customer acknowledges that all quotes provided by Aspire are subject to available capacity as defined by Aspire's chosen supplier and that an additional fee may be levied to the customer based on additional capacity upgrades that may be required.

2.3.6 The Customer acknowledges that any move between premises will need to be notified to Aspire and the Customer acknowledges that, given the nature of broadband connections, a simple swap from one premises to another without down time or additional cost is not possible and that the current connection may need to be ceased and that a new connection at the new premises may be needed on a new 12 month contract.

2.3.7 Where order details received from the Customer are illegible, materially incomplete, or incorrect, Aspire reserves the right to charge the Customer an administration charge comprising a minimum charge of £45.00 plus a charge of £25.00 for each subsequent hour or part thereof.

2.3.8 A 'Breaking through walls' Charge will apply for the provision of broadband services access links for each of the broadband products. Aspire may re-wire or disconnect incorrectly wired connections without liability on its part. (The following are not suitable for ADSL: ISDN, PBX lines, RedCare, BT Video Stream, BT DataStream, PCM facilities, coin box operation). The Customer acknowledges that ADSL may impact other services terminating on the line such as security systems terminating on the line such as security systems. These services should be tested once the installation is complete. Such Charges will be notified to the Customer in advance if applicable.

2.3.9 The Customer acknowledges that additional duct charges may apply for the provision of broadband services access link for EACH of the broadband products and that the Customer will be advised by Aspire of these charges on a case by case basis.

2.3.10 The Customer understands that the Service comprises a telecommunication service to access the Internet and such other Services as the Customer has ordered in the Service Order. Maximum 'burst' rates for the Service will be

provided upon request. The Customer acknowledges that the burst rates for the Service may be reduced by contention at peak usage times within Aspire's System.

2.3.11 Aspire will only be able to provide the Service where the Customer's existing telecommunications supplier and/ or Aspire's associates support it (including for the purposes of this Agreement an obligation that the Customer has and maintains a contract for the use of a BT provided an analogue direct exchange line which terminates on a master network forming part of the BT network). The Customer further acknowledges that the installation of the Service may cause some disruption to the Customer's telecommunication services.

2.3.12 Where it is necessary for Aspire to install or maintain the Service, the Customer warrants that all approvals have been granted for the installation and will provide Aspire with such access as it is reasonably required and any technical or personnel assistance reasonably necessary for the installation and maintenance of the Service including electricity supply and suitable accommodation and environmental conditions to accommodate the Aspire Equipment.

2.3.13 The Customer shall be responsible for any Aspire Equipment located at the Site and the Customer will only use the Aspire Equipment and associated software in accordance with instructions and/or software licenses that Aspire provides to the Customer from time to time. The Customer undertakes not to modify, tamper or in any way interfere with Aspire's Equipment and Aspire will not be liable for any repairs to the Aspire Equipment other than those arising as a result of natural and proper use of it and:

2.3.13.1 the Customer will insure any Aspire Equipment located at the Site against loss or damage from all risks for an amount equal to the full replacement value of the Aspire Equipment; and

2.3.13.2 the Aspire Equipment shall be and remains the property of Aspire at all times and must be surrendered in re-saleable condition, together with all manuals and packaging upon termination. Where the Customer fails to surrender the Aspire Equipment, Aspire reserves the right to retrieve the Aspire Equipment directly from the Site; and

2.3.13.3 the Customer will be liable to Aspire for any loss or damage to the Aspire Equipment except in so far as any such loss or damage is attributable to the negligent or wilful act or omission of Aspire.

2.3.14 Aspire hereby grants to the Customer and the Customer hereby accepts a non-exclusive and non-transferable license to use any software provided by Aspire to access the Internet, for the sole purpose of enabling the Customer to use the Service. The Customer hereby acknowledges that the title to all software is and shall remain with Aspire or Aspire's third party licensors. The Customer hereby undertakes to use its reasonable endeavours to protect and keep confidential all Aspire software used by it, and shall make no attempt to examine, copy, alter, reverse engineer, disassemble or tamper with such software.

2.3.15 Use of the Service by the Customer is deemed acceptance of any and all licences relating to the Service.

2.3.16 The Service is provided for the Customer's use only and the Customer undertakes not to resell, hire, lease or allow use of the Service by any third party without the prior written consent of Aspire and:

2.3.16.1 the Customer shall use the Service for lawful purposes only in compliance with all current and future statutes in force from time to time; and

2.3.16.2 the Customer agrees not use the Service:

- to send or receive materials or data which is in violation of any law or regulation or which is defamatory, offensive, abusive, indecent, obscene or in breach of confidence, privacy, trade secrets or in breach of any third party Intellectual property rights (including copyright) or in breach of any other rights;
- in a manner which constitutes a violation or infringement of the rights of any person or a violation or infringement of any statutory duty or obligation in contract tort or otherwise, to any third person;
- in breach of instructions that Aspire have provided to the Customer in respect of the use of the Service; or
- other than in conformance with Aspire's standard acceptable use policies and the Internet Protocols as published from time to time; and

2.3.16.3 the Customer acknowledges that no broadband connection provided by Aspire can be segmented or resold for further provision to beneficiaries other than the Customer as known by Aspire and shall not be in breach of the terms and conditions as set out by our broadband supplier; and

2.3.16.4 the Customer acknowledges that Aspire may be required by current or future law or regulation to access, store and/or take copies of the Customer's data stored on or transmitted by the Service. Aspire reserves the right to terminate the Service with immediate effect and without further obligation or liability to the Customer as required by any law enforcement organisation or by the Courts; and

2.3.16.5 the Customer agrees that he will not use a Name so as to infringe the rights of any other person or company under statute or common law in a corresponding trademark or name. The Customer also agrees to comply with the terms and conditions of any third party through which Aspire has supplied the Name to the Customer; and

2.3.16.6 The Customer acknowledges that Aspire will be in no way liable for any dial-up charges incurred by the Customer in the event the Customer's primary or back-up connectivity devices are used and the Customer further acknowledges that Aspire is no responsible for informing the Customer of such outages if they are unknown to Aspire management and/ or systems; and

2.3.16.7 Aspire will provide technical via its Customer Support Department. Customers further acknowledge that the support as provided by Customer Support does not include the support of the Customer's network and shall only include support up to the Customer's modem/router.

2.3.16.8 Aspire reserves the right to restrict the passage of communications where the Customer makes profligate use of the Aspire network or the Service to the detriment of Aspire or Aspire's other Customers, until the Customer gives an acceptable undertaking to Aspire to modify its use of the Service. In other words, the Customer acknowledges that they will not utilise the service beyond what would constitute typical usage profiles (meaning use of file sharing devices such as Kazaa does not constitute typical usage profile); and

2.3.16.9 the bandwidth used for traffic to and from the web site is exceeded beyond Aspire's considered acceptable use and is deemed by Aspire to affect the performance of other Customers' Websites. Notwithstanding any other remedies it may have under these Terms and Conditions or in law, Aspire, in the event that the acceptable bandwidth is exceeded, may elect to charge the Customer an additional monthly fee as set out in the Aspire Price List; and

2.3.16.10 any breach of these terms and conditions by the Customer will entitle Aspire to disconnect or terminate the

Service without notice with immediate effect, and Aspire may restore the Service if the Customer gives an acceptable assurance that there will be no further contravention.

#### **Clause 3.1 Hosting Packages**

3.1.1 The Customer acknowledges that the fees paid for any Aspire hosting package are allocated to the acquisition of the domain name as registered with the appropriate Registrar and that all other services, as delivered as part of that initial hosting package, are deemed to be provided free of charge.

3.2.2 The Customer further acknowledges that once the acquisition of this domain name has occurred as outlined on the Service Order Aspire is deemed to have fully executed its contractual obligations to the Customer.

#### **Clause 3.2 Internet Domain Name Registrations**

3.2.1 The Customer understands that all Aspire packages include an Internet Domain Name. On payment of the appropriate fee by the Customer as specified in the Aspire Price List, Aspire shall apply for registration of the Domain Name requested by the Customer on the Service Order.

3.2.2 The registration of the Domain Name shall, at all times, be subject to the terms and conditions from time to time in force of the relevant naming authority or registration agent which terms and conditions are hereby included into these Terms and Conditions. The terms and conditions of the naming authority and registration agent currently used by Aspire can be viewed online at the following URL's:

3.2.2.1 For International TLD's (.com, .biz, .info, .net, .org, etc.): <http://www.inwww.com/policies/>

3.2.2.2 For UK TLD's (.co.uk, etc.): <http://www.nic.uk/ref/terms.html>

3.2.2.3 For CentralNic Domains (.uk.com, .uk.net, .gb.com, .gb.net, etc.)

<http://www.centralnic.com/terms>

3.2.3 The Customer acknowledges that Aspire will endeavour to inform the Customer of any changes in the relevant naming authorities or registration agents by posting of such change on the Aspire website <http://www.Aspireinternet.co.uk>

The Customer acknowledges sole responsibility for the Customer's own awareness of and compliance with such terms and conditions.

3.2.4 The Customer agrees and acknowledges that Aspire shall not be liable in any way for any acts, omissions, or errors of the naming authority or registration agent in relation to the registration (or non-registration, as the case may be) of the Domain Name.

3.2.5 Whilst Aspire will use all reasonable endeavours to obtain the Domain Name for the Customer, the Customer acknowledges that Aspire shall not be liable for such registration where the Domain Name is or becomes unavailable for any reason whatsoever.

3.2.6 In the event that the Domain Name requested by the Customer is unavailable or becomes unavailable between Aspire's receipt of the Service Order for registration and the date the application is processed by the registration agent or naming authority, Aspire will offer an alternative Domain Name to the Customer and upon the Customer's approval of such alternative Domain Name, Aspire shall register that alternative Domain Name in accordance with the provisions of this Clause. For the avoidance of doubt, the unavailability of the Domain Name or any replacement domain name shall not affect the validity of the relevant Agreement or the Customer's obligation to pay the charges related to the Service Order.

3.2.7 Aspire shall not be liable for any delay in activating the Domain Name on the Aspire Server nor for any cost incurred by the Customer as a result of such delay and the Customer's obligation to pay the fees set out in the Service Order shall not be affected by any such delay.

3.2.8 The Customer warrants that the Domain Name does not infringe any intellectual property rights of any third party, including but not limited to trade marks registered or otherwise used by any third party and the Customer shall indemnify and keep Aspire indemnified in respect of any loss, damages, costs or other expenses arising out of or in connection with any breach by the Customer of this Clause.

3.2.9 The Customer agrees, as a condition of any Agreement, to be bound by the dispute policy used from time to time by the relevant naming authority or registration agent, which policy can be found in the terms referred to in this Clause above.

3.2.10 The Customer acknowledges that Aspire will use its own entity as the Administrative, Technical, and Billing contact with the respective registrar unless otherwise informed to the Customer.

3.2.11 The Customer acknowledges that Aspire shall have the right to cancel, disconnect, or transfer the Domain Name at any time upon receipt of a court order or arbitration award requiring such cancellation, suspension, or transfer.

#### **Clause 3.3 Internet Domain Name Transfers**

3.3.1 At the Customer's request, Aspire shall host an Existing Domain Name owned by the Customer (the 'Existing Domain Name') always provided that the Customer shall be solely responsible for the transfer of the Existing Domain Name to the Aspire server on or after the receipt of the Service Order and for any fees payable to any third party in relation to such transfer. In order to effect the transfer, the Customer shall request his current ISP or any other relevant third party:

3.3.1.1 in the case of UK TLD's to modify the IPS Tag as required by Aspire; and

3.3.1.2 in the case of international TLD's to replace the name servers, admin, technical and billing contact with the relevant details per Aspire's instruction.

3.3.2 The transfer of the Domain Name shall, at all times, be subject to the terms and conditions from time to time in force of the relevant naming authority or registration agent which terms and conditions are hereby included into these Terms and Conditions. The terms and conditions of the naming authority and registration agent currently used by Aspire can be viewed online at the following URL's:

3.3.2.1 For International TLD's (.com, .biz, .info, .net, .org, etc.): <http://www.inwww.com/policies/>

3.3.2.2 For UK TLD's (.co.uk, etc.): <http://www.nic.uk/ref/terms.html>

3.3.2.3 For CentralNic Domains (.uk.com, .uk.net, .gb.com, .gb.net, etc.)

<http://www.centralnic.com/terms/>

3.3.3 The Customer acknowledges that Aspire will endeavour to inform the Customer of any changes in the relevant naming authorities or registration agents by posting of such change on the Aspire website <http://www.Aspireinternet.co.uk>

The Customer acknowledges sole responsibility for the Customer's own awareness of and compliance with such terms and conditions.

3.3.4 The Customer acknowledges responsibility for the transfer to Aspire or duplication of the Customer's website before the domain name is released from the previous ISP and, in the event that the website is lost as a result of the transfer, the Customer agrees to provide Aspire with a copy of the website to be uploaded on the Customer's web space and that the Customer will not hold Aspire liable for any loss whatsoever of any of the Customer's material in

the transfer process.

3.3.5 On termination of this Agreement, the Customer may transfer the Domain Name or any Existing Domain Name to any third party server subject to completion by the Customer of a transfer form and payment by the Customer of the transfer fee of £25+VAT per domain name.

3.3.6 Aspire shall not be liable for any delay in such transfer and the Customer's obligation to pay the fees set out in any Service Order shall not be affected by any such delay.

3.3.7 Aspire reserves the right not to release the Domain Name or the Existing Domain Name to another ISP if the Customer, at the time of termination, is in breach of any of the Customer's obligations including payment of any outstanding fees relating to the Domain Name in question.

#### **Clause 3.4 Web Hosting**

3.4.1 The Customer agrees to comply with this Web Hosting related Acceptable Use Policy ('AUP') as part of the Customer's agreement with Aspire. By using the Aspire web hosting facility, the Customer agrees to comply with this AUP, and Aspire may terminate the Customer's account and/or withdraw this facility and any other facilities associated with Aspire's services (in either case in whole or in part) should the Customer fail to comply with this policy. This policy has been written on a common sense basis and has been designed to protect the interests of those companies and individuals who wish to benefit from what the Internet has to offer and:

3.4.1.1 the Customer may not maintain web space above that limit in which the Customer has contracted. The Customer is prohibited from maintaining a mailbox above the specified storage size as dictated by the Aspire Package specified on the Service Order. The Customer should ensure that unneeded e-mail is periodically deleted so that the Customer does not exceed the mailbox limit. If this limit is exceeded, the Customer may not be able to receive mail; and

3.4.1.2 while it is acceptable for the Customer to extend the amount of CGI scripts provided by Aspire, it is understood that no support can be offered for third party scripts. Any additional CGI scripts found to be functioning in an offensive or destructive manner or found to be using excessive processing power or memory will be removed from the website without notice and the Customer accepts that Aspire reserves the right to remove any CGI scripts that, in Aspire's opinion, are causing or could cause a detrimental effect on Aspire's systems or to other users of the internet; and

3.4.1.3. the Customer will be issued with a user name and password in order to access the account. The Customer must take all reasonable steps to maintain the confidentiality of this user name and password. If the Customer reasonably believes that this information has become known to any unauthorised person, the Customer agrees to immediately inform Aspire and the password will be changed; and

3.4.1.4 the Customer is responsible for all use and content of the Customer's hosted space. Aspire does not accept responsibility for any content that the Customer places on to the Customer's hosted web site. Aspire reserves the right to investigate suspected violations of the AUP. When Aspire becomes aware of possible violations, an investigation may be initiated, which may include gathering information from the Customer and the complaining party, if any, and examination of material on Aspire servers. Much of the AUP reflect acts that may constitute breaches of legislation or regulations and may in some cases carry criminal liability; and

3.4.1.5 during an investigation, Aspire may require the Customer to divulge information relating to its activities and how they may have impacted on Aspire's services so as to compromise the security or tamper with Aspire's system resources or accounts on Aspire computers or at any other site. Use or distribution of tools designed for compromising security is prohibited. Examples of such tools include: password-guessing programs, cracking tools or network probing tools; and

3.4.1.6 unsolicited advertising mailings, whether commercial or informational, are strictly prohibited. The Customer may send advertising material only to addresses that have specifically requested it. Aspire will not forward mail to the Customer if the account was terminated for bulk mailing or unsolicited advertising. Violations of this AUP can sometimes result in massive numbers of e-mail responses. If the Customer receives so much e-mail that Aspire resources are adversely affected, Aspire may suspend or close the Customer's account; and

3.4.1.7 customers for whose web pages are generating Internet traffic above that level for which has been contracted, the Customer will be informed and offered the opportunity to upgrade the capacity of the web space for a fee outlined in the Aspire Price List; and

3.4.1.8 Aspire will investigate complaints regarding inappropriate material and content on its network and may, at Aspire's sole discretion, require that the material be removed or otherwise take action as outlined above. Criteria for determining whether a page is inappropriate include the system resources consumed by the page and applicable laws; and

3.4.1.9 the Customer may not use World Wide Web pages within or outside Aspire's network to violate any part of Aspire's General Usage Policies, or to attempt to disrupt the content and sites or Internet experiences of other users; and

3.4.1.10 reselling Aspire hosted web space is expressly prohibited; and

3.4.1.11. Aspire reserves the right to remove any web page (in whole or in part) on Aspire's servers, at any time and for any breach of this policy. Aspire will not accept any responsibility occasioned for any loss caused as a result of such removal; and

3.4.1.12 Aspire will provide access to the Customer's web space on its servers for uploading of the Customer's third party designed websites. Aspire will provide assistance to the Customer in so much as completing the uploading of any such website. The Customer acknowledges that because there are so many design packages available on the market, and the numerous methods of web design, Aspire does not guarantee that the Customer's website will function correctly when uploaded to the Aspire server. Though Aspire will make efforts to assist the Customer in remedying these instances, the Customer acknowledges that Aspire will in no way be responsible for providing a remedy to fix the Customer's site. The Customer acknowledges that Aspire cannot, under any circumstances, offer assistance with respect to third party CGI scripts not directly provided by Aspire.

3.4.1.13 Aspire reserves the right to amend, alter or modify this policy at any time and in any manner. Aspire may notify you by e-mail of this, but the Customer agrees to review the policy regularly and the Customer's continued use of the Service two weeks after any change will constitute acceptance of the change.

#### **Clause 3.6 Website Construction**

3.5.1 Aspire shall assist the Customer with the construction of and/ or development of a simple Web Site solely by the recommendation of one of its web-design partners.

3.5.2 The Customer acknowledges that Aspire cannot be held responsible for the performance of any aspect of the web-design, site or web-design company.

3.5.2.1 Aspire will provide the Customer with access to the Aspire web space as specified below.

3.5.3 Upon payment of the appropriate fee, Aspire shall allocate to the Customer web space on its website server as defined by the Aspire package as outlined on the Service Order on which the Customer's Web Site may be hosted.

3.5.4 Any updates and/or amendments to the Website, web space, or retrieval of E-mail shall be made by the Customer using the Software by accessing the Web Site on Aspire 's website server via Aspire's designated connection platforms (dial-up or broadband). In the event that the Web Site is accessed, updated or amended, or retrieval of E-mail facilitated in any other way than via the Aspire's Connection platform as specified by Aspire, the Customer shall pay to Aspire the fee specified in the Aspire Price List.

3.5.5 Whilst Aspire shall use all reasonable endeavours to ensure that the Web Site can be accessed by users of the Internet at all times, the Customer acknowledges that it is technically impossible to provide such access free of fault at all times and Aspire does not undertake to do so. Aspire expressly reserves the right to suspend availability of the Web Site for the purpose of necessary or scheduled maintenance. Access to the Web Site may also be adversely affected by conditions and performances outside Aspire 's control, including without limitation the breakdown of transmission and telecommunication links.

#### **Clause 3.6 Newsgroups**

3.6.1 By using the Aspire network and services to access newsgroups or Internet chat rooms, the Customer agrees to comply with this Clause. Aspire may terminate the Customer's account should the Customer fail to comply and the Customer acknowledges that this Clause is included to protect the interests of those companies and individuals who wish to benefit from what the Internet provides. Aspire reserves the right to investigate suspected violations of this Clause. When Aspire becomes aware of possible violations, it may initiate an investigation, which may include the gathering of information from the Customer and the complaining party, if any, as well as the examination of material on the Aspire servers. The Customer accepts that most of this Clause relates to acts that may constitute breaches of legislation or regulations and may, in some cases, carry criminal liability.

3.6.2 During an investigation, Aspire may suspend the Customer's account. If Aspire believes that a violation of this Clause has occurred, it will take responsive action and may involve and will cooperate with law enforcement bodies and/or injured third parties if a criminal violation is suspected. Such action may include the cancellation of newsgroup postings, warnings to the user responsible, and the suspension or termination of the account responsible. Aspire will determine what action will be taken in response to a violation on a case-by-case basis. Violations of this Clause could also subject the Customer to criminal liability. Certain UK regulatory authorities have wide investigative powers, which may require Aspire to disclose information about its users. Indirect or attempted violations of this Clause, and actual or attempted violations by a third party on the Customer's behalf, shall be considered violations of the policy by the Customer.

3.6.3 Aspire reserves the right to discontinue access to any newsgroup at any time and for any reason.

3.6.4 Newsgroup news articles posted using Aspire services must comply with the written charter/FAQ of the newsgroup to which they are posted. If a newsgroup does not have a charter or FAQ, its title may be considered sufficient to determine the user who does not wish to receive it. Aspire recognises that e-mail is an informal medium; however, the Customer must refrain from sending further e-mails to a user after receiving a request to stop.

3.6.5 Unsolicited advertising mailings, whether commercial or informational, are strictly prohibited. The Customer may send advertising material only to addresses that have specifically requested it. Aspire will not forward e-mail of accounts that have been terminated for bulk mailing or unsolicited advertising.

3.6.6 Chain letters are unsolicited by definition and may not be propagated using Aspire's services.

3.6.7 The Customer may not send, distribute, or reply to mail-bombs. Mail-bombing is understood as either e-mailing copies of a single message to many users, or sending large or multiple files or messages to a single user with malicious intent.

3.6.8 Violations of this Clause can sometimes result in massive numbers of e-mail responses. If the Customer receives so much e-mail that Aspire resources are adversely affected, Aspire may shut down the Customer's account.

3.6.9 Aspire is not responsible for the content of any newsgroup posting, whether or not a newsgroup subscriber made the posting.

3.6.10 If a post is found to violate one of the policies above, or to contain unlawful material (including, without limitation, direct threats of physical harm, hardcore and child pornography and copyrighted, trademarked and other proprietary material used without proper authorisation), Aspire may require that the post be removed and may take action as outlined above.

3.6.11 Aspire reserves the right to amend, alter or modify this policy at any time and in any manner. Aspire may notify the Customer by e-mail of this, but the Customer acknowledges that that Aspire's terms and conditions must be reviewed regularly by the Customer and that the Customer's continued use of the Service two weeks after any change constitutes acceptance of the change.

#### **Clause 3.7 Product Special Offers**

3.7.1 The Customer acknowledges that products or services subscribed to by the Customer during a promotional offer will be subject to the below:

3.7.1.1 where a product or service is offered under a promotion at a discounted price or for free for the first year, the product will be charged at the full price for all subsequent years as set out on the Aspire Price List in force on the commencement date of the current contract period.

3.7.1.2 where a product or service is offered free on a trial basis for a specified period of time (30 days, 60 days, 90 days or other), the Customer agrees to provide written notice on company letterhead prior to the end of the trial period informing Aspire of the Customer's intention not to continue with the service offered under the trial and the Customer agrees to return all or any hardware (modems, routers etc.) if applicable before the expiration of the trial period by registered post. The Customer further acknowledges that in cases where notice is not served within the specified period, Aspire will raise an invoice (pro-forma or otherwise) for a further year's service and collect payment via the payment details held on the Customer's account and that the customer accepts Aspire's standard terms and conditions.

3.7.1.3 where a product or service is offered free on a trial basis for a specified period of time, the Customer acknowledges that upon completion of the trial period, payment will be taken at the contract term set to commence for a further year's time or longer based on the attributes and services offered under the promotion.

#### **Clause 3.8 Anti-Virus Software**

3.8.1 The Customer acknowledges that Aspire will, at its own discretion, update its anti-virus program from time to time so that the programs will continue to detect all viruses that are both known to Aspire and analysed for detection purposes by Aspire at the first date of release of each such update.

3.8.2 The Customer acknowledges that Aspire makes no warranties, conditions, undertakings or representations, express or implied, statutory or otherwise in relation to the provision of the anti-virus software.

3.8.3 Aspire hereby excludes all implied terms, conditions, and warranties. The Customer acknowledges that Aspire does not warrant that the software will meet the Customer's requirements or that the operation of the software will be error free or uninterrupted or that defects in the software will be corrected.

3.8.4 The Customer hereby acknowledges that the fee paid for the software reflects the allocation of risk in this agreement and also that it is not in Aspire's control how the Customer uses the software.

3.8.5 The Customer agrees to use the software at its own risk and in no event shall Aspire be liable to the Customer for any direct, consequential, incidental or special damage or loss of any kind (except personal injury or death resulting from Aspire' negligence) including, but not limited to, loss of profits, loss of contracts, business interruptions, loss of or corruption of data or the Customer's inability to use the software, however caused and whether arising under contract or tort, including negligence or otherwise except as expressly provided herein.

3.8.6 The Customer acknowledges that, as viruses are regularly created and distributed around the Internet, the anti-virus software provided by Aspire is intended to detect only specific known viruses and Aspire does not warrant that the software will detect all viruses present on the Customer's computer systems, e-mail, or networks at any given time. In addition, false virus detections might occur and, if in any doubt, the Customer should contact Aspire to assess if a positive detection is correct.

3.8.7 The Customer acknowledges that in the event a virus is detected in an e-mail, either incoming and/or outgoing (dependant on the fees paid by the Customer), the e-mail will be quarantined and destroyed, after which an e-mail will be sent to the sender and/or receiver, notifying he or she that a virus was detected and destroyed.

3.8.8 If any exclusion, disclaimer or other provision contained in this agreement is held to be invalid for any reason by a court of competent jurisdiction and Aspire becomes liable thereby for loss or damage that may lawfully be limited, such liability whether in contract, tort (including negligence) or otherwise, will not exceed the total fees paid by the Customer dating back to the commencement of the current 12-month contract preceding such liability arising.

3.8.9 The Customer shall indemnify Aspire and keep Aspire indemnified against all and any losses, costs, damages, liabilities, claims, demands and expenses suffered or incurred by Aspire arising out of or connected with any third party claims which arise from the Customer's provision of the services. The Customer shall maintain in force at all times insurance sufficient to cover its losses.

3.8.10 The Customer acknowledges that only e-mail sent via Aspire's servers will be scanned by the software and that any use of SMTP mail on the Customer's account may result in inbound and/or outbound e-mail not being scanned by the software given the nature of how SMTP mail operates.

#### **Clause 3.9 Online Control Panel**

3.9.1 The Customer acknowledges that the Online Control Panel is designed to provide the Customer with increased usability with respect to the management of the Aspire account and that from time to time the Control Panel may not reflect with complete accuracy of account related information.

3.9.2 The Customer acknowledges that only authorised account users are to have access to the Control Panel and that Aspire shall be indemnified against any loss or damage incurred by the customer with respect to misuse of the Control Panel.

#### **Clause 3.10 – anti-SPAM Software**

3.10.1 The Customer acknowledges that Aspire's anti-SPAM product has been developed on a reasonable endeavours basis and that given the nature and evolution of SPAM within the market, Aspire cannot be held liable for errant flagging or disposing of SPAM as it is sent to the Customer.

3.10.2 The Customer acknowledges that SPAM filter sensitivity (including additional Rules) is set by the Customer utilising Aspire's Control Panel found at <http://www.Aspireinternet.co.uk> and that Aspire does not, on behalf of the Customer, manage the SPAM filter sensitivity as administered by the Customer via the Online Control Panel.

3.10.3 The Customer acknowledges that only e-mail utilising Aspire's mail-servers will be scanned by the anti-SPAM service and therefore any e-mail not passing via the Aspire mail-servers will not be scanned.

3.10.4 The Customer agrees that anti-SPAM works at the domain name level and therefore the rules as set for that domain name will apply to all POP e-mail accounts associated with that domain name universally.

3.10.5 The Customer acknowledges that it is his/her responsibility to ensure that flagged SPAM which is sent to the nominated e-mail POP box is deleted on a regular basis and that any automated rules as outlined in the Online Control Panel are managed solely by the Customer.

#### **Section 4. cleanWEB**

4.1.1 Coming Soon.

#### **Section 5. Aspire Telecoms**

5.1.1 Aspire agrees to provide the Customer with the Services in accordance with the Service Order or application as submitted to Aspire by the Customer.

5.1.2 Aspire shall provide the Services with all due skill, care and diligence in accordance with good industry practice, by utilizing appropriately experienced, qualified and trained personnel and in accordance with its own established internal procedures.

5.1.3 Aspire reserves the right to vary the technical specification of the Service where necessary for operational reasons and without diminishing the quality or speed of the Service, after giving reasonable notice to the Customer. The Customer agrees to follow any instructions and procedures of Aspire with regard to the use of the Service.

5.1.4 Aspire may provide guidance or instruction in relation to the Service, which it thinks reasonably necessary, in the interests of safety or the quality of the Service in relation to the Customer and Aspire's other Customers and end users. Any such instructions, whilst they apply, shall be deemed to form part of these Conditions.

5.1.5 Aspire reserves the right at any time to make any modification, change, addition to or replacement of any part of Aspire's computer network or any software or Services where this is required to conform with any applicable safety or any other statutory or legal requirements, or at any other time provided that such modification, change, addition or replacement does not materially detract from, reduce or impair the overall quality or performance of the Service.

5.1.6 The Customer acknowledges that it is technically impractical to provide the Service free of faults and that Aspire does not give an undertaking to do so. In the event of a fault in the Service the Customer must report it to

Aspire in writing for the attention of the Telecoms department. The Customer accepts that any faults on the line are the responsibility of the network provider to repair, and could be at the cost of the Customer if for any reason the fault is identified to be internal to the Customer's business or property. The Customer acknowledges that the line rental is payable to BT and all line faults must be reported to BT as identified.

5.1.7 Aspire will use its reasonable endeavours to maintain a service in accordance with industry wide acceptable service levels. The Customer acknowledges that Aspire cannot guarantee continuous uninterrupted use especially where Aspire must carry out routine maintenance, repairs, reconfigurations or upgrades or in circumstances beyond its control including Force Majeure.

5.1.8 The Customer acknowledges that this service is not compatible with 'Star Services' offered by BT or other telecom companies and that it is the Customer's responsibility to inform Aspire if a telephone number/line has one of these services. If the Customer fails to inform Aspire, and the number is rejected, the Customer will be charged £25 per rejected number.

5.1.9 In consideration of Aspire providing the Services to the Customer, the Customer shall pay the Charges set out on the invoice (pro-forma or otherwise) within 7 days of the date of a valid invoice (pro-forma or otherwise) from Aspire. More detailed itemised bills can be sent to the customer via e-mail in electronic format supporting the total amount shown on the invoice.

5.1.10 The Customer acknowledges that, in order to receive an itemised invoice, the Customer must provide Aspire with a valid e-mail address. Any returned e-mail will be deleted and Aspire is not responsible for re-issuing previously sent itemised bills.

5.1.11 All Charges, costs, rates and fees are stated exclusive of Value Added Tax (VAT) and any other taxation that may be applicable. The Customer shall pay the VAT and any additional taxes as set out on the Order/Invoice and agrees to all guidelines as set out in Clause 1.3. In the event the Customer has more than 5 lines with Aspire, an additional £10 will be charged per line above and beyond the normal reconnection fee as outlined in Clause 1.3.

5.1.12 Where the Customer disputes any amount due under an invoice, the Customer shall notify Aspire of this dispute within 7 days of the invoice (pro-forma or otherwise) date, the undisputed sum shall be immediately payable to Aspire and the parties agree to resolve the disputed sum within 14 days of notification of the dispute by the Customer to Aspire. Aspire reserves the right to disconnect the Service and all other services the Customer uses with Aspire if the undisputed sum is not paid within the 7 day time period. Aspire will work in good faith to correct the disputed amount within 14 days of notification though it will be bound to the terms as set out in these terms and conditions in the resolution process.

5.1.13 The Customer confirms that if any payment is overdue, Aspire has the right to charge interest at 5% per annum above the base/lending rate of Royal Bank of England in force from time to time, from the date that payment is due until the date of actual payment. Such interest shall occur on a daily basis. Aspire reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. Additionally Aspire reserves the right to terminate the Service and all other services provided to the Customer by Aspire in instances where the Customer defaults in payment.

5.1.14 Any and all prices given as quotations are subject to change in accordance with Aspire's current Price List. All quotations are based on information supplied to Aspire by the Customer. In delivering the Service, additional and supplemental work may be required and the Customer agrees to pay such additional amounts as specified on the invoice.

5.1.15 Should the Customer wish to add additional telephone lines to the Customer's contract, the lines will be added free of charge though the Customer agrees that a new 12 month contract will commence under which all lines (newly added and previous) will be part of that new 12 month contract.

5.1.16 Should the Customer wish to change existing telephone numbers, the Customer may do so free of charge though the Customer agrees that a new 12 month contract will commence under which all lines (newly added and previous) will be part of that new 12 month contract.

5.1.17 The Customer confirms that Aspire must be informed of any changes on the account including but not limited to address changes or contact person changes and that Aspire possesses the right to charge a £15 administration fee per change and that Aspire will not be held responsible for any disruption or lack of service which result from a lack of notification by Customer to Aspire regarding such changes.

5.1.18 The Customer accepts that a change in ownership of the Customer's business, either termination of contract applies or, with the Customer's written permission, the new owner accepts the service and a new 12-month contract applies from change of ownership.

5.1.19 The Customer agrees that any termination prior to the end of the 12-month contract period will result in a penalty of £15 per line.

5.1.20 The Customer agrees to notify Aspire 60 days prior to the end of the 12-month contract if the Customer does not wish the contract to renew for a further year. The Customer accepts that if notification, in writing on the Customer's letterhead, is not received 60 days prior to the end of the 12 month contract, the contract will automatically renew for a further 12 months and normal cancellation rules apply.

5.1.21 The Customer acknowledges that all Direct Debit transactions will be billed at a minimum of £5/ month.

5.1.22 The Customer acknowledges that Aspire will not be liable for any fees relating to the re-programming of the Customer's switchboard so the Customer can participate in this offering and, in the event the Customer cancels the service with Aspire, Aspire will not be responsible for any charges or fees relating to the re-programming of the switchboard.

5.1.23 The Customer accepts that any charges resulting from the disconnection of any auto-dialler prior to Aspire's instruction and therefore prior to the commencement of the service will be born not by Aspire but by the Customer in full.

## **Section 6. Co-Location, and Dedicated Web Site Hosting**

### **Clause 6.1 Co-Location**

6.1.1 The minimum contract period is one-year, with 60 days notice required thereafter, and billing is annual in advance, with payment for the set-up and annual fee due upon the submission of the Service Order to Aspire.

6.1.2 One IP address is assigned per server by default. Additional IP addresses are available at no charge, subject to local IP registry rules on assignment, and effective use of existing allocated IP space. IP registry rules prevent Aspire from issuing IP numbers for simple virtual hosting (as this can be accomplished using HTTP/1.1), however use of SSL and/or FTP will qualify you for additional IP assignments.

6.1.3 Aspire will set-up the DNS for one domain free as part of the initial set-up fee. Additional DNS set-ups and modifications may be charged at a rate specified by Aspire. DNS can be run on the Customer's server, and Aspire can provide secondary service at no charge if the Customer's name server allows zone transfers.

6.1.4 Access to the Customer's server is available 24 hours per day – seven days per week, however Aspire must be contacted first to authorise your access to the facility. For security reasons, Aspire reserves the right to require the Customer to be accompanied by a Aspire employee when visiting the Customer's server.

6.1.5 The Customer will have access to a remote power reboot switch to power-cycle the Customer's server. If the Customer wishes to use this service, the Customer should ensure that the server is configured to power-up as soon as power is applied. This service is not available to servers with redundant power supplies. The customer, on request, can decline the remote reboot service.

6.1.6 All servers have network availability, http, smtp, pop3, dns service monitored if running. Subject to operating system and other limitations, monitoring of disk usage, cpu usage, processes and system log messages is possible.

6.1.7 Live technical support is available during published support hours, outside these hours engineers are available on-call for emergency issues.

6.1.8 The Customer acknowledges that traffic usage will be monitored daily, averaged over a month, and excess traffic charged monthly in arrears. Traffic usage is defined as the sum of incoming and outgoing traffic on a system.

6.1.9 All engineer time working on the Customer's server is charged at the standard hourly rate. Because of the varied nature of hardware and software running on co-located servers, engineer maintenance is only available on a best-effort basis. If the Customer requires guaranteed maintenance on-site, Aspire can recommend third party maintenance companies. All hardware purchased on the Customer's request to restore a server to working order will be charged to the Customer.

6.1.10 Depending on the operating system used, Aspire may be able to backup the Customer's server. Backup systems are designed for recovery of entire disks and partitions in the event of failure, not for recovery of individual files. Alternatively, the Customer may provide the Customer's own tape drive, and tapes can be swapped at requested intervals (and posted to the Customer for secure off-site storage if required).

6.1.11 The Customer acknowledges that whilst Aspire will have insurance to cover the replacement costs of the Customer's hardware against accidental damage, Aspire will not cover the value of any software, lost data, or any other information and that it is Aspire's recommendation that the Customer take out additional insurance to cover any information or liability that the Customer may incur as a result of such loss.

6.1.12 Use of Aspire's network and hosting facilities are subject to Aspire's Terms and Conditions of Service and General Use Policies as outlined at [www.Aspireinternet.co.uk](http://www.Aspireinternet.co.uk) Servers may not be used for storage or transmission of material illegal in the hosting country, may not be used as platforms for hacking, cracking, denial of service attacks or any activity which degrades network performance for others on Aspire's network or other networks, spamming newsgroups, or unsolicited bulk e-mail. Aspire reserves the right to remove the Customer's server from Aspire's network at any time at Aspire's sole discretion for any of the above reasons, and no service credit will be provided.

6.1.13 The Customer acknowledges that it is the Customer's responsibility to ensure that all equipment and software is patched to the appropriate level to protect against any exploits that may impact its performance or the performance of any aspect of the Aspire network.

6.1.14 The Customer acknowledges that Aspire has the right to take any co-located or dedicated equipment off-line in the event that an exploit is discovered which may in any way adversely impact the Customer's systems or Aspire's network to any degree without notice and without any liability on Aspire's part.

6.1.15 Aspire will notify the Customer seven days prior to any facility changes or moves with clarification regarding estimated downtime. The Customer will not accrue any additional charges resulting from such moves. Aspire shall endeavour to clearly communicate all facility changes with the Customer's NOC. Aspire, during any service interruptions, is required to respond to the Customer's initial service queries within 2 hours. Should no remedy be made for such service interruption exceeding 6 hours the Customer reserves the right to discuss service credits with Aspire based on an investigation by both parties with no credit or refund to exceed one month's fees as calculated by taking the mean average of the three preceding month's billings prior to the date of the service interruption.

## **Clause 6.2 Hosting facilities**

6. 2.1 Access to the Hosting facilities is highly restrictive therefore the below terms and conditions of entrance must be met prior to anyone obtaining access to the Hosting facility including but not limited to:

6.2.1.1 all Customers must provide a list of names of all possible attendees; and

6.2.1.2 all named contacts must allow a photograph to be taken for security purposes; and

6.2.1.3 all named contacts must have a valid Aspire security card with them at the time of entrance; and

6.2.1.4 any company wishing to send an engineer who is not on the list of named contacts must arrange this with Aspire 24hrs in advance; and

6.2.1.5 any attendees who wish to bring a third party must arrange the visit with Aspire at least 4hrs in advance; and

6.2.1.6 any attendees accompanied by a third party must escort the third party in all areas; and

6.2.1.7 any attendees other than named contacts must sign the visitors book whenever entering or leaving the Hosting facility.

6. 2.2 Use of Hosting facility is restrictive and therefore the below terms and conditions of use must be met prior to

anyone obtaining access to the Hosting facility including but not limited to:

6.2.2.1 no packaging of any type is allowed into the Hosting facility; and

6.2.2.2 customers must not take any food or drink into the Hosting facility. No liquids are allowed into the Hosting facility; and

6.2.2.3 public walkways must not be obstructed at any time, hardware maintenance must be carried out in the Customer's own areas; and

6.2.2.4 the Customers must not touch, tamper, or interfere with in any way equipment with which is not the Customer's own; and

6.2.2.5 not engage in any activity that may cause any problems or disruption to other Aspire customers; and

6.2.2.6 all supplied cables for deployment under the Hosting facility floor must be low smoke compliant.

6.2.3 Any Deliveries, Storage, and/ or Deployment must occur within Aspire's standard operating procedure included but not limited to the following criteria:

6.2.3.1 customers must notify Aspire of any intended installation of any circuits of any type at least 24 hours in advance by fax and e-mail. Third parties attempting to gain access to the Hosting facility in order to survey or install a circuit will be turned away if the visit has not been arranged previously with Aspire; and

6.2.3.2 customers must notify Aspire of any deliveries at least 24 hours in advance by fax; and

6.2.3.3 any unscheduled deliveries or items of a delivery that have not been previously identified to Aspire will not be accepted; and

6.2.3.4 details of quantity and type of items being delivered must given for any delivery and all deliveries must be clearly marked with details of contents and the name of the company in which they are destined. Aspire reserves the right to open and inspect any delivery for security purposes; and

6.2.3.5 all deliveries will be stored free for a maximum of five days, after which they must be deployed to the customer's area in the Hosting facility. Customers must arrange any other requirements with Aspire in advance; and

6.2.3.6 all equipment must be unpacked in any unpacking room only; and

6.2.3.7 customers are responsible for the disposal of the Customer's own waste packaging materials to the proper waste disposal area outside of the building.

6.2.4 The Customer may not use Aspire's hosting service for any illegal purposes.

6.2.5 The Customer is responsible for all content, activities, and operation of any equipment located within the Aspire premises.

6.2.6 Failure to adhere to the outlined Hosting facility criteria may result in disconnection of power and/or removal of the Customer's equipment from the Hosting facility.

6.2.7 Aspire will not be held liable for any losses incurred should equipment be removed/disconnected owing to a breach of the above guidelines.

6.2.8 Aspire's decision in all matters pertaining to the above criteria will be final and Aspire reserves the right to modify the Hosting facility policies at its own discretion at any time without prior notification.

### **Clause 6.3 Dedicated Server Hosting**

6.3.1 The minimum contract period is one-year, with 60 days notice required thereafter, and billing is annual in advance, with payment for the set-up and annual fee due upon the submission of the Service Order to Aspire.

6.3.2 One IP address is assigned per server by default. Additional IP space is available at no charge, subject to local IP registry rules on assignment, and effective use of existing allocated IP space. IP registry rules prevent Aspire from issuing IP addresses for simple virtual hosting (as this can be accomplished using HTTP/1.1), however use of SSL and/or FTP will qualify the Customer for additional IP assignments.

6.3.3 Aspire will set-up the DNS for one domain free as part of the initial set-up fee. Additional DNS set-ups and modifications are charged at the rates on Aspire's Price List. DNS can be run on the Customer's server, and Aspire can provide secondary service at no charge if your name server allows zone transfers.

6.3.4 There is no need for the Customer to visit the Hosting facility, as Aspire owns and manages all of the

Customer's hardware.

6.3.5 The Customer will have access to a remote power reboot switch to power-cycle the server. This service is not available to servers with redundant power supplies. The Customer, on request, can decline the remote reboot service.

6.3.6 All servers have network availability, http, smtp, pop3, dns service monitored if running. Subject to operating system and other limitations, monitoring of disk usage, cpu usage, processes and system log messages is possible.

6.3.7 Live technical support is available during published support hours, outside these hours engineers are available on-call for emergency issues.

6.3.8 The server will be set-up up and configured by a Aspire engineer. All hardware supplied, including replacement hardware installed in case of failure, and hardware upgrades requested by the Customer, remains the property of Aspire.

6.3.9 The cost of any engineering time and parts necessary to fix any hardware aspect of the server is included in the monthly fee paid by the Customer for the service.

6.3.10 Additional hardware can be added to the system for an installation fee and additional monthly fee. The server may be replaced with a higher specification machine for an agreed upgrade fee, and a change to the Customer's monthly fees.

6.3.11 Aspire will install and configure its standard operating system and software configuration for the Customer's chosen operating system platform, available from Aspire on request. Any changes, additions or deletions to this standard configuration must be agreed with Aspire, and there may be an additional charge for custom software configuration.

6.3.12 All software will be fully legal product and fully licensed for use on the server alone. The licences will remain the property of Aspire and are only valid for use by the Customer while the Customer maintains service with Aspire. The Customer is responsible for purchasing and installing any software required elsewhere to communicate with the Customer's server.

6.3.13 Aspire will provide best-effort technical support on its standard software packages supplied with all servers. Because of the vast variety of software that may be installed on Aspire's servers, Aspire may not be able to support any package that is not installed as part of Aspire's standard software installation. (This includes extra packages installed on request for an additional fee)

6.3.14 If the standard software configuration as installed by Aspire is maintained on the Customer server, Aspire will, on request, upgrade operating systems and software packages. This includes service packs, OS patches, security patches, etc. Aspire will not upgrade to beta or non-final software for stability reasons, although the Customer is free to do such upgrades at the Customer's own risk. Upgrades to new point or full releases of software or operating systems is at Aspire's discretion, depending on licensing issues for the use of the upgraded software - this is in the case that the licensing terms for software change with a new release to make the upgrade prohibitively expensive. The customer is responsible for ensuring that the configuration of the server is compatible with the upgrade requested. Upgrades will be done as part of the system administration time available each month, and additional time required for upgrades may be at chargeable rates.

6.3.15 Traffic usage will be monitored daily, averaged over a month, and excess traffic charged monthly in arrears. Traffic usage is defined as the sum of incoming and outgoing traffic on a system.

6.3.16 Depending on the operating system used, Aspire may be able to backup the server to its centralised backup stores. Aspire's backup systems are designed for recovery of entire disks and partitions in the event of failure, not for recovery of individual files. If recovery of individual files is important, Aspire recommends that the Customer makes a copy of his data onto a different area of the Customer's server's disk space. Alternatively, the Customer may provide his own tape drive, and tapes can be swapped at requested intervals by Aspire and posted to the Customer for secure off-site storage if required.

6.1.17 The Customer acknowledges that it is the Customer's responsibility to ensure that all equipment and software is patched to the appropriate level to protect against any exploits that may impact its performance or the performance of any aspect of the Aspire network.

6.1.18 The Customer acknowledges that Aspire has the right to take any co-located or dedicated equipment off-line in the event that an exploit is discovered which may in any way adversely impact the Customer's systems or Aspire's network to any degree without notice and without any liability on Aspire's part.

6.3.19 The Customer acknowledges that Aspire must be informed and consulted with regard to the adding of POTS, ISDN or leased lines to the Customer's server(s).

6.3.20 Use of Aspire's network and Hosting facility facilities is subject to Aspire's Terms and Conditions of Service and General Use Policy. Servers may not be used for storage or transmission of material illegal in the hosting country, may not be used as platforms for hacking, cracking, denial of service attacks or any activity which degrades network performance for others on Aspire's network or other networks, spamming newsgroups, or unsolicited bulk e-mail. Aspire reserves the right to remove the server from its network at any time at its sole discretion for any of the above reasons, and no service credit will be provided.

#### **Section 7. Aspire Associate Program**

The Aspire Associate program terms and conditions attached are in addition to the Aspire Standard Terms and Conditions.

#### **Participation in Associate Program**

7.1.1 By completing, signing and returning the application form, the Associate confirms that they wish to join the Aspire Associate Program (EAP).

7.1.2 The Associate understands that participation in the EAP is dependant upon the Associate placing new customers on their account on an ongoing basis. Although circumstances and account types may differ, should the Associate repeatedly fail to achieve an agreed minimum, the Associate may be contacted to review their eligibility for continued participation in the EAP.

7.1.3 The Associate understands that participation in the EAP is at the discretion of Aspire. Should the actions of any Associate be deemed to be harmful to the reputation of Aspire the Associate will be removed from the EAP immediately.

#### **Ordering of and Payment for Services**

7.2.1 The Associate may use the password protected Associate section of the Aspire website to place orders for services and products on their account. It is the Associates responsibility to ensure that access details are kept secure and to report any breaches of security. Aspire will treat all valid orders as genuine and cannot cancel orders

that have been submitted.

7.2.2 The Associate understands that invoices for services and products purchased on credit under the EAP will be issued immediately upon receipt of order. These invoices will be payable within 15 days. Aspire reserves the right to make an administration charge of £20 for each correspondence in relation to overdue payments.

7.2.3 The provision of any service by Aspire submitted by the Associate shall be paid on an annual basis for a stated initial contract period and annually thereafter, unless and until terminated by either party by providing 60 days written notice with no termination earlier than the end of the initial contract period.

7.2.4 Wholesale ADSL services will be billed to The Associate monthly in advance until a cease date is confirmed by Aspire upon request of the Associate. Ceased circuits will be billed until the end of the month of which the circuit is ceased or re-graded.

7.2.5 The Associate understands that Aspire may perform a credit check to verify the applicants' credit-worthiness. In the event that this check is failed, Aspire may accept the applicant onto the EAP on a non-credit basis.

7.2.6 Aspire reserves the right to disconnect any or all of the services on the Associate's account in the event of non-payment by the Associate.

#### **Terms Relating to Provision of Services**

7.3.1 All services are provided as per the terms and conditions to be found online at [www.Aspireinternet.co.uk](http://www.Aspireinternet.co.uk) The Associate understands that Aspire has no direct obligations to any other party than the Associate, but under the terms of this Agreement will provide support where appropriate.

7.3.2 In performing Aspire's obligations under this Agreement, Aspire shall, at all times, exercise the reasonable skill and care of a competent public ISP (Internet Service Provider) or, as applicable, telecommunications operator. The Associate acknowledges that neither Aspire, nor any other party has control over the Internet, and service interruptions may occur due to circumstances beyond Aspire's reasonable control such as system malfunctions or failures of third parties. The Associate therefore acknowledges that Aspire shall not be held liable in any way for losses to The Associate or a customer of The Associate as a result of such service interruptions regardless of their nature.

7.3.3 It is the responsibility of the Associate to supply the correct customer or registrant details when placing an order. The Associate accepts responsibility for the supply of these details and agrees that under no circumstance will Aspire be liable or responsible for any damages resulting from the supply of incorrect customer or registrant details.

7.3.4 The Associate will provide customers placed under this agreement with 1st level support. Aspire will then provide Associate with a 2nd level support service, although Aspire will contact the customer in question directly if requested by the Associate and when deemed necessary by Aspire.

7.3.5 Customers using connectivity provided by Aspire should be made aware of the applicable terms of provision of service to be found at [www.Aspireinternet.co.uk](http://www.Aspireinternet.co.uk) In particular, customers intending to use their own mail server should be instructed to take care that their mail server is secured against the possibility of illegitimate use by third parties to relay mail through the Aspire network. In such a case, Aspire reserves the right to terminate the connection without prior notice.

#### **Additional Terms**

7.4.1 The Associate will have access to and administration rights over any usernames, passwords, or customer details contained in their account. The customer of a Associate may only assume exclusive control over their account under one of the following circumstances, in which event the customer will be required to sign a continuation of service agreement under the standard Aspire terms and conditions:

7.4.1.1 The Associate has provided Aspire with their express written consent to release administration of an account to their customer.

7.4.1.2. The Associate has threatened to, or has ceased trading, or has had a receiver, administrative receiver, administrator or manager appointed over the whole or any part of its assets or undertaking, has become insolvent or gone into liquidation and that every reasonable effort has been made to contact the Associate.

7.4.1.3. The Associate has been excluded from the EAP.

7.4.1.4 The Associate has failed to notify Aspire in the appropriate time regarding the renewal of Aspire packages in which case Aspire reserves the right to contact and renew the package with the customer of an Associate.

7.4.2 In the circumstances described in clause 4.1.2 above, the Associate shall be deemed to have provided Aspire with its consent to assume the right to supply services direct to all customers of such Associate whose details had previously been supplied by the Associate to Aspire.

7.4.3 No partnership Declaration - For the avoidance of doubt the relationship between the parties as set forth in this Agreement shall not be construed as one legal partnership.

7.4.4 Enforcement by Third Parties - This Agreement is not intended to be for the benefit of and shall not be exercisable by, any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself trustee of the rights under it for the benefit of any third party.

7.4.5 Operative Law - This Agreement shall be considered a contract made in England and according to English law and subject to the exclusive jurisdiction of the English courts to which both parties hereby submit.

7.4.6 The Associate agrees to abide where applicable by the full version of online terms and conditions that can be found at <http://www.Aspireinternet.co.uk>

7.4.7 The Associate also accepts responsibility for making their customers aware of the applicable terms and conditions that can be found at <http://www.Aspireinternet.co.uk>