

WEBSITE AND E-MAIL HOSTING AND REMOTE BACKUP TERMS

1. APPLICATION OF THE GENERAL CONDITIONS

- 1.1 This Website and E-mail Hosting and Remote Backup Terms shall be read together with the General Conditions and unless the context otherwise requires, such defined terms used in this Website and E-mail Hosting and Remote Backup Terms shall have the same meaning as those in the General Conditions and vice versa.
- 1.2 In the event if any inconsistencies between the General Conditions and this Website and E-mail Hosting and Remote Backup Terms, the provisions in this Website and E-mail Hosting and Remote Backup Terms will prevail.

2. DEFINITIONS:

- 2.1 In this Website and E-mail Hosting and Remote Backup Terms:
 - 2.1.1 **'Acceptance Test'** means the acceptance test set out in the Brief.
 - 2.1.2 **'Client Data'** means Client Data as defined in Clause 5.2 of this Website and E-mail Hosting and Remote Backup Terms.
 - 2.1.3 **'E-mail Hosting Fees'** means the e-mail hosting fees specified in the Brief in respect of the E-mail Hosting Services.
 - 2.1.4 **'E-mail Material'** means E-mails, information in the E-mails including text, pictures, messages and/or such other information attached and/or contained in any of the E-mails being hosted by Continental.
 - 2.1.5 **'E-mail Hosting Services'** means the E-mail hosting services specified in the Brief.
 - 2.1.6 **'Intellectual Property'** means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.
 - 2.1.7 **'Remote Backup Services'** means the backing up of the Client Data further detailed in the Brief and Clause 5 of this Website and E-mail Hosting and Remote Backup Terms which the Client hosts and/or keeps on its own central server.
 - 2.1.8 **'Remote Backup Fee'** means the remote backup fees specified in the Brief in respect of the Remote Backup Services.
 - 2.1.9 **'Site'** means the Client's website specified in the Brief which Continental is hosting for the Client on which material including the E-mail Materials and/or Website Materials (as the case may be) would be hosted.

- 2.1.10 **'Website Hosting Fees'** means the website hosting fees specified in the Brief in respect of the Website Hosting Services.
- 2.1.11 **'Website Material'** means any materials, software, information and content of the website which is to be hosted by Continental for the Client.
- 2.1.12 **'Website Hosting Services'** means the website hosting services specified in the Brief.

3. COMMENCEMENT OF HOSTING SERVICES

- 3.1 The E-mail Hosting Services and/or Website Hosting Services (as the case may be) shall commence on the date set out in the Brief and subject to earlier termination, continue for the period specified in the Brief.
- 3.2 The Parties may mutually agree to renew the E-mail Hosting Services and/or Website Hosting Services (as the case may be) for such additional periods as may be agreed between the Parties. Unless otherwise waived by Continental, any renewals of the E-mail Hosting Services and/or Website Hosting Services (as the case may be) shall be made in writing.

4. HOSTING SERVICES

- 4.1 Continental shall using reasonable skill and care to provide the Website Hosting Services and/or E-mail Hosting Services in accordance with the Client's requirements detailed in the Brief.
- 4.2 Continental shall provide the Client with the facility to update and/or upload new Website Material onto the server.
- 4.3 Without prejudice to Clause 4.2 of this Website and E-mail Hosting and Remote Backup Terms, the Client will be entitled to request Continental to assist the Client with such updating and/or uploading of new Website Material and the Parties will mutually agree such fees payable by the Client to Continental for such assistance.
- 4.4 Continental will use its reasonable endeavours to ensure that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) are available all the time.
- 4.5 Notwithstanding Clause 4.3 of this Website and E-mail Hosting and Remote Backup Terms, while Continental will endeavour to ensure that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) is available all the time, Continental not does guarantee that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) will be uninterrupted, secure or error-free or that any data generated, stored, transmitted or used via or in connection with the E-mail Hosting Services and/or Website Hosting Services (as the case may be) will be complete, accurate, up to date, received or delivered.
- 4.6 The Client acknowledges that Continental may from time to time carry out repairs, maintenance and/or improvements to E-mail Hosting Services and/or Website Hosting Services (as the case may be). In this regard, Continental will use reasonable endeavours to inform the Client of such non availability of the E-mail Hosting Services

and/or Website Hosting Services (as the case may be) and ensure that such maintenance and/or improvements are carried out outside normal business hours.

- 4.7 For the avoidance of doubt, the Client acknowledges that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) are dependent on the Client having an internet connection. The Client acknowledges that Continental does not provide internet connection services to the Client nor does Continental act as the Client's Internet Service Provider ('ISP'). The Client is responsible for its own internet connection.
- 4.8 Continental shall as soon as it is practicable on request by the authorised personnel of the Client, suspend availability of the Website Materials and/or the E-mail Materials and shall likewise, on request by the authorised personnel of the Client, as soon as it is practicable, procure that the provision of access to such materials is resumed following such suspensions.
- 4.9 Where the Client requires changes to the Website Hosting Services and/or E-mail Hosting Services, any such changes shall be agreed pursuant to the variation procedures set out in Clause 9 of the General Conditions i.e. the Variation Clause.

5. REMOTE BACKUP SERVICES

- 5.1 Continental shall using reasonable skill and care, provide the Remote Backup Services in accordance with the Client's requirements detailed in the Brief. Continental shall remotely backup the Client's data on a daily basis or as agreed in the brief.
- 5.2 The types, amount and/or the period of which the client data will be remotely backed up by Continental shall be as detailed in the Brief ('Client Data'). For the avoidance of doubt, the remote backup services are only provided for Client Data which are not part of the Web Hosting Services and/or Email Hosting Services.
- 5.3 In the event that the central servers where the Client Data become unavailable and/or if the Client Data gets lost, becomes corrupted and/or inaccessible, Continental shall make available to the Client such backed up Client Data as soon as it is reasonably practicable and in any event no later than 48 hours.
- 5.4 Continental is not responsible for the quality, accuracy and state of the Client Data which it backs up for the Client at the point such Client Data is backed up. The Client is solely responsible to ensure that quality, accuracy and state of the Client Data is of satisfactory quality.
- 5.5 The Client shall:
- 5.5.1 ensure that it is entitled to transfer any personal data so that Continental may backup such data and provide the Client with the Remote Backup Services; and
- 5.5.2 ensure that the transfer and/or backing up of such Client Data does not infringe the Intellectual Property rights of any third parties.
- 5.6 The Client agrees to indemnify and hold harmless Continental for any losses, damages and cost arising from any breach of the Client's obligations under Clause 5.5 of this Website and E-mail Hosting and Remote Backup Terms

6. CLIENT'S RESPONSIBILITIES

- 6.1 The Client shall be responsible for the accuracy and completeness of the Website Material.
- 6.2 The Client shall provide Continental with or shall procure that the Client's current hosting service provider provides Continental with the Website Material and/or E-mail Material (as the case may be) so as to enable Continental to provide the E-mail Hosting Services and/or Website Hosting Services (as the case may be) to the Client.
- 6.3 The Client acknowledges that where Continental is unable to implement the E-mail Hosting Services and/or Website Hosting Services (as the case may be) due to the fault of the Client, Continental shall not be liable for any losses and/or damages suffered by the Client. In addition, Continental reserves the right to invoice the Client for any additional expenses reasonably incurred by Continental as a result of such delays by the Client.
- 6.4 Where Continental is merely providing co-location services to the Client, it is the Client's sole responsibility to ensure that the server and/or any hardware which are used are fit for purpose. In addition, unless otherwise agreed in writing by the Parties, it is the Client's sole responsibility to support and maintain such server and/or hardware.
- 6.5 Unless agreed otherwise in writing, the Client is responsible to back up its Website Material and/or E-mail Materials and Continental shall not be liable to the Client for any loss and/or damage suffered by the Client as a result of the Client not backing up its Website Material and/or E-Mail Materials.
- 6.6 The Client shall ensure that it grants Continental access and authorisation to the Client's central servers to perform the Remote Backup Services.

7. INSTALLATION AND ACCEPTANCE TESTING

- 7.1 Continental shall upload and/or install the Website Material and/or E-mail Material (as the case may be) onto the hosting server.
- 7.2 Continental will thereafter inform the Client that the uploading and installation of the Website Material and/or E-mail Material (as the case may be) has been completed and that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) is ready for acceptance testing which shall be carried out in accordance with the Acceptance Test criteria.
- 7.3 Continental and the Client will jointly carry out the Acceptance Test.
- 7.4 Where the E-mail Hosting Services and/or Website Hosting Services (as the case may be) pass the Acceptance Test, the Client shall forthwith confirm such acceptance of the E-mail Hosting Services and/or Website Hosting Services (as the case may be) in writing in such a form as may be reasonably requested by Continental.
- 7.5 Where the E-mail Hosting Services and/or Website Hosting Services (as the case may be) fail the Acceptance Test, Continental will rectify any errors, issues and/or problems to ensure that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) meet the requirements set out in the Acceptance Test and notify the Client of the errors, issues and/or problem and that the same have been fixed.

Continental will have no less than 30 days to rectify such errors, issues and/or problems. Thereafter the Parties will re-commence acceptance testing in accordance with the Acceptance Test.

- 7.6 Where the E-mail Hosting Services and/or Website Hosting Services (as the case may be) pass the Acceptance Test on the second attempt, Clause 7.4 of this Website and E-mail Hosting and Remote Backup Terms will apply. If the E-mail Hosting Services and/or Website Hosting Services (as the case may be) fail the Acceptance Test on the second attempt, Clause 7.5 of this Website and E-mail Hosting and Remote Backup Terms will apply.
- 7.7 Where the E-mail Hosting Services and/or Website Hosting Services (as the case may be) pass the Acceptance Test on the third attempt, Clause 7.4 of this Website and E-mail Hosting and Remote Backup Terms will apply. If the E-mail Hosting Services and/or Website Hosting Services (as the case may be) fail the Acceptance Test on the third attempt, the Client will be entitled to terminate the relevant Contract.
- 7.8 Notwithstanding Clauses 7.4 to 7.7 of this Website and E-mail Hosting and Remote Backup Terms, the Client shall be deemed to have accepted the E-mail Hosting Services and/or Website Hosting Services (as the case may be) if:
- 7.8.1 the Client uses the E-mail Hosting Services and/or Website Hosting Services (as the case may be) for its business purposes, any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
- 7.8.2 the Client unreasonably delays the start of the relevant Acceptance Test or any retests for a period of more than seven working days from the date on which Continental is ready to commence running such Acceptance Tests or retests (as the case may be).

8. CHARGES AND PAYMENT

- 8.1 Unless otherwise specified in the Brief, Continental shall be entitled to invoice the Client in respect of the E-mail Hosting Fees, Website Hosting Fees and/or Remote Backup Fee (as the case may be) for the first month of such services upon the Parties agreeing the Brief and the Client shall pay to Continental the E-mail Hosting Fees, the Website Hosting Fees and/or Remote Backup Fee (as the case may be) in advance and on receipt of Continental's invoice unless otherwise stated in the brief.
- 8.2 Thereafter, Continental shall be entitled to issue the Client with a monthly, quarterly or yearly invoice (as the case may be) in respect of the E-mail Hosting Fees, Remote Backup Fee and/or Website Hosting Fees (as the case may be) and such invoice shall be payable within 7 days of the date of Continental's invoice.
- 8.3 To the extent applicable, Clause 10 of the General Terms shall apply.

9. E-MAIL MATERIAL, WEBSITE MATERIAL AND CLIENT DATA

- 9.1 The Client shall ensure that the Client's data, Website Materials and/or E-mail Materials do not infringe any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, contains viruses or other hostile computer programs, threatening, liable to incite racial

- hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (“**Inappropriate Content**”);
- 9.2 The Client undertakes to comply and shall contractually procure that its users comply with generally accepted principles of internet usage (whether governed by the laws of any jurisdiction or not) including refraining from:
- 9.2.1 sending unsolicited mass communications (“Spam”);
 - 9.2.2 sending mail bombs; Trojan horses; viruses or other disruptive programs or devices;
 - 9.2.3 pirating or otherwise illegally copying software or other proprietary material; and
 - 9.2.4 violating the security of any website or engaging in unauthorised decryption of protected material.
 - 9.2.5 The Client acknowledges that Continental has no control over any content placed on the Site by visitors and does not purport to monitor the content of the Site.
- 9.3 Continental reserves the right at any time and without notice and without liability, to suspend availability and/or remove any content and/or material from the Site (including the Website Material and/or E-mail Material) where it reasonably suspects such content and/or Material is Inappropriate Content. Continental shall as soon as it is practicable, notify the Client if it becomes aware of any allegation that content and/or material on the Site may be Inappropriate Content.
- 9.4 The Client acknowledges and agrees that Continental may be required by a law enforcement agency to monitor Site content and traffic and if necessary give evidence of the same to support or defend any dispute or actionable cause or matter which arises in relation to the same.
- 9.5 The Client shall indemnify Continental, its successors and assigns against all damages, losses and expenses arising as a result of any action or claim that the materials and/or content on the Site and/or being backed up by Continental including the E-mail Materials and/or Website Materials constitute Inappropriate Content.
- 9.6 The Client warrants that any personal data on the system hosted by Continental complies fully with the Data Protection Act 1998 and associated legislation and hereby indemnifies Continental against any infringement of such legislation (except insofar as Continental is responsible for the security of the system and the materials) and in particular acknowledges that Continental does not operate or exercise any control over, and accepts no responsibility for where or in what jurisdiction the materials may be received.
- 9.7 The Client undertakes and shall contractually procure that each of its users and/or visitors undertake not to upload any materials and/or contents onto the Site which are Inappropriate Content. The Client shall be solely responsible for the accuracy, legality, and compliance with the relevant rules and regulations in respect of the materials and/or content uploaded onto the Site.

- 9.8 The Client warrants that it has and shall contractually procure that its users have obtained all necessary consents, approvals and licences for the use of third party Intellectual Property and the use of such third party Intellectual Property will not violate any intellectual property rights belonging to any third party.
- 9.9 The Client shall indemnify and hold harmless Continental against any claims, proceedings, losses, liabilities, damages (including reasonable costs), charges and expenses of whatever nature arising out of or in connection with any claim or action made against Continental relating to a breach of any sub-clauses of Clause 9 of this Website and E-mail Hosting and Remote Backup Terms by the Client and/or its users provided that Continental will not make any admissions without the Client's prior written consent and not take any step (or omit to take any step) which would prejudice the Client's defence of the claim, and shall allow the Client to conduct and/or settle all negotiations and litigation resulting from such claim. Continental shall, at the request of the Client, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by the Client for any reasonable out of pocket expenses incurred in so doing.

10. DATA PROTECTION

- 10.1 In this Clause 10, **Personal Data** has the meaning given in the Data Protection Act 1998.
- 10.2 The Client acknowledges that to the extent Continental processes any Personal Data on behalf of the Client:
- 10.2.1 it shall act only on instructions from the Client; and
 - 10.2.2 it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

11. LIMITATION OF REMEDIES AND LIABILITY

- 11.1 Nothing in this Website and E-mail Hosting and Remote Backup Terms shall operate to exclude or limit Continental's liability for death or personal injury caused by its negligence or fraud.
- 11.2 Continental shall not be liable to the Client for any loss and/or damages arising from the relevant Contract, the Remote Backup Services, E-mail Hosting Services, the Website Hosting Services, co-location services, damage and/or loss to the Client's data, E-mail Materials and/or Website Materials and such other content and/or materials hosted on the Site.
- 11.3 Subject to Clause 11.2 of this Website and E-mail Hosting and Remote Backup Terms, Continental shall not be liable for any indirect or consequential losses to the Client including damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity which relate to the relevant Contract, the E-mail Hosting Services, the Remote Backup Services, the Website Hosting Services, co-location services, damage to Client Data, the E-mail Materials and/or Website Materials and such other content and/or materials hosted on the Site.

- 11.4 Subject to Clauses 11.1, 11.2 and 11.3 of this Website and E-mail Hosting and Remote Backup Terms, Continental's aggregate liability in respect of claims based on the relevant Contract, the E-mail Hosting Services, co-location services, Remote Backup Services and/or Website Hosting Services (as the case may be) in any calendar year whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 100% of the total E-mail Hosting Fees, Website Hosting Fees, Remote Backup Fee and/or location fee (as the case may be) paid by the Client in respect of the relevant calendar year.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Without prejudice to the other provisions in the Conditions, as between Continental and the Client, the Client retains all Intellectual Property rights in the Client Data, E-mail Materials, the Website Materials and such other content and/or materials on the Site, and grants Continental a licence to use such Intellectual Property rights to the extent required to perform its obligations pursuant to the applicable Contract.
- 12.2 All Intellectual Property Rights in any works arising in connection with the performance of the Remote Backup Services, E-mail Hosting Services and/or Website Hosting Services by Continental shall be the property of Continental and/or its licensors, and Continental hereby grants to the Client a non-exclusive licence during the term of the relevant Contract to such Intellectual Property rights for the purposes of utilising the E-mail Hosting Services and/or Website Hosting Services provided by Continental.
- 12.3 The Client shall indemnify and hold harmless Continental against all damages, losses and expenses arising as a result of any action or claim that the E-mail Materials, the Website Materials and such other content and/or materials on the Site infringe the Intellectual Property rights of any third party.

13. TERMINATION

- 13.1 Without prejudice to any other rights or remedies which the Parties may have, either party may terminate the relevant Contract without liability to the other if:
- 13.1.1 the other Party fails to pay any amount due under such Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
 - 13.1.2 the other Party commits a material breach of any of the terms of the relevant Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 13.1.3 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under the relevant Contract) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed of its assets or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts.

- 13.2 On termination of a Contract for any reason:
- 13.2.1 the Client shall immediately pay to Continental all of Continental's outstanding unpaid invoices and interest and, in respect of any services supplied but for which no invoice has been submitted, Continental may submit an invoice, which shall be payable immediately on receipt; and
 - 13.2.2 subject to paying such fees as on Continental's then applicable hourly rates, Continental will assist the Client to transfer all the E-mail Materials, Website Materials and such materials and/or contents on the Site to a new hosting service provider.
- 13.3 The accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

14. SUPPORT AND MAINTENANCE

- 14.1 Continental will provide the Client with support and maintenance services in the event the E-mail Hosting Services and/or Website Hosting Services (as the case may be) are down and/or unavailable.
- 14.2 Where the Client and/or the Client's users are unable to access the Site, the E-mail Materials and/or Website Materials (as the case may be), the Client shall first ascertain whether the inability to access the Site, the E-mail Materials or Website Materials (as the case may be) is caused by a failure on the part of the E-mail Hosting Services and/or Website Hosting Services or the Client's internet service provider or central servers. Where fault lies with the E-mail Hosting Services and/or Website Hosting Services, the Client's authorised representative shall contact Continental immediately using the following details:
- Email address: support@webnetism.com
- Telephone Number: 01452 855558
- 14.3 Upon receiving the Client's report, Continental shall use reasonable endeavours to resolve and rectify the problem to allow the Client and its users to access the Site, the E-mail Materials or Website Materials. Where it is subsequently established that fault does not lie with the Site, the E-mail Materials or Website Materials but with the Client's equipment or its internet connection, Continental reserves the right to charge the Client such reasonable cost as Continental may have incurred.