

## Terms and Conditions

These terms and conditions shall have legally binding effect between the Company and the Customer and shall be deemed to have been accepted by the Customer upon placing an Order with the Company.

### **Definitions**

"The Company" refers to Nuage Services Limited, a company registered in England with company registration number 6891639.

"The Customer" refers to any person (whether a company, sole trader, individual or partnership) who purchases Services from the Company.

"Order" refers to an agreement entered into by the Customer and the Company to purchase Services from the Company.

"Software" refers to the software described in the Order.

"Services" means each and every service provided by the Company to the Customer as set out in the Order.

"Contract Term" means the initial contract term set out in the Order for provision of the Service(s) plus any extension of the term under the operation of this Agreement.

### **Agreement**

In consideration of the payment of the fees set out in the Order the Company will provide the Service(s) to the Customer as set out in the Order in accordance with these terms and conditions and in accordance with the terms of the Service Level Agreement agreed with the Customer.

### **Contract Term**

The Company will provide the Services for the Contract Term specified in the Order and thereafter will continue to provide the Service(s) until the Agreement or the Service is terminated by the Company or the Customer in accordance with the termination provisions set out herein.

### **Payment terms**

The Company's usual payment terms are 30 days from invoice date. Customer will be invoiced 30 days in advance of their service. If different payment terms are agreed these will be specified in the Order.

The Customer acknowledges that Services in respect of which a Contract Term is specified are charged at a rate calculated on the basis of the Contract Term. If the Customer terminates this Agreement or one of the Services provided hereunder prior to the expiry of the Contract Term the Customer will be liable to pay the fees for such Services for the remainder of the Contract Term.

All payments are quoted exclusive of VAT which will be added at the standard rate in accordance with current VAT law.

### **Software Licenses**

The Customer's rights to use the Software are subject to the usage rights granted by the third party software supplier, such as Microsoft, Sage or Adobe etc. The Customer acknowledges that the usage rights of third party software may vary from product to product and agrees to abide by such rights. The Customer is deemed to accept the usage rights in relation to the Software set out in the Order by placing an Order with the Company.

The customer agrees that any software provided by The Company will remain the property of The Company and cannot be taken, transferred or re-assigned.

### **Hosted Exchange**

The Customer will be invoiced monthly in arrears for usage. There are three billing methods available and the invoice will reflect the billing method agreed with the Company. If the Customer has agreed to a Company Storage Tariff the Customer will be invoiced the agreed flat price per user multiplied by the number of users on the Hosted Exchange platform during the month, plus a fee at the agreed storage price for the actual storage used which is the sum of the total storage used by all of the users plus any public folder storage. The Customer accepts that the number of users may vary from time to time as may the actual storage used. The Customer agrees to pay the per user fees for each mailbox and the per GB storage fee for the actual storage used.

If the Customer has agreed to a User Storage Tariff with hard limits as the billing method the Customer will be invoiced as follows: at the end of each month the Customer will be invoiced for the actual mailboxes on Hosted Exchange. The Customer acknowledges that the actual number of mailboxes can vary from month to month depending on the Customer's usage in adding or removing users from Hosted Exchange. The monthly invoice will set out the mailboxes and the tariff for each mailbox.

If the Customer has agreed to a User Storage Tariff without hard limits as the billing method the Customer will be invoiced as follows: at the end of each month the Customer will be invoiced for the actual mailboxes on Hosted Exchange with a charge for each mailbox being based on the actual storage used by that mailbox. The available storage quotas are: 1GB, 5GB and 10 GB increments.

### **Hosted Desktop**

The Customer will be invoiced monthly in arrears for this Service. The charges will include the following: (a) a per user per month charge as set out in the order, (b) a charge for company storage based on the actual amount of storage used multiplied by the price per GB (GigaByte) agreed with the Customer and set out in the order and (c) a charge for any additional hosted applications as set out in the Order (d) a charge for any additional desktop resources such as Memory or CPU.

### **Hosted Sharepoint**

The Customer will be invoiced monthly in arrears for this Service. The charges will include the following: (a) a per user per month charge as set out in the order and (b) a charge for company storage based on the actual amount of storage used multiplied by the price per GB (GigaByte) agreed with the Customer and set out in the order. The Customer accepts that any customisation of Sharepoint that the Customer requests will be subject to an additional charge based on a quotation provided by the Company at the Customer's request.

### **Web hosting, Dynamic Servers and Managed Hosting**

The Customer acknowledges that Internet connections, technical hardware and third party software are used by the Company to fulfill the hosting Service and that 100% reliability cannot therefore be guaranteed. Subject to any terms agreed in a Service Level Agreement, which sets out additional terms under which the Company provides the Service(s), the Company will not be liable for service interruptions or down-time of the Server whether resulting from technical failure or howsoever arising. Where the Customer has ordered a dedicated server or co-located server service from the Company a separate Service Level Agreement provides additional terms and conditions under which the service is provided.

Whilst the Company will use reasonable skill and care to ensure the security of its web servers, the Company does not guarantee that its web servers or those co-located with the Company will be free from unauthorised users or hackers and exclude any liability that results from such abuse.

**Domain names**

The Company will use its best endeavours to ensure that, once an Order to register a domain name has been received, an application to register the domain name is made within a reasonable time period. However, the Customer accepts that between the time of Order for a domain name and the time the Company (whether by itself or through a third party instructed by the Company) applies to register the requested domain name, another third party may have registered the domain name which are registered by naming authorities on a first come first served basis. If this happens the Company will not be liable for any resulting loss or damage to the Customer.

The registration of the domain name and its on-going use is subject to the relevant naming authority's terms and conditions. For UK domain names including .co.uk, .plc.uk, .ltd.uk, .org.uk and .me.uk the Customer agrees to abide by Nominet's Terms and Conditions for Domain Name Registration (see below).

**UK Domain Names**

For UK domain names the Customer acknowledges and agrees that when it places an Order for a UK domain name with the Company that the Company is acting as an agent of the Customer (who will be the Applicant for the domain name) and that the Customer will enter into a direct contractual relationship with Nominet subject to Nominet's Terms and Conditions for Domain Name Registration which can be read by clicking on the following link:

<http://www.nominet.org.uk/registrants/aboutdomainnames/legal/terms/> The Customer is solely responsible for its use of a domain name and must abide by the naming authority's terms and conditions. Any dispute between the Customer and any other person regarding the rights relating to the domain name is a matter between the Customer and such third party.

**Web site and application bespoke development**

The Company will design and build a web site or application in accordance with the functionality defined in the Proposal and/or functional specification. If the Customer changes the specification of the design or functionality of the web site or application after sign-off / acceptance then the Company reserves the right to charge additional fees based on the time and cost involved in making the changes. The Customer is solely responsible for obtaining any and all necessary intellectual property rights consents and/or authorisations in respect of any material published on its web site. The Company guarantees that any web site or application built by the Company will substantially perform its functions in Mozilla (Firefox) web browser, Microsoft Internet Explorer 7 or later version of the Internet Explorer web browser available at the date of this Agreement.

**Acceptable Usage Policy**

The Customer agrees to abide by the following Acceptable Usage Policy ("AUP"). The Customer warrants and undertakes to us that it will not by itself or others:

- a) use its web site (where the Company is providing the hosting service for the web site) for unlawful purposes;
- b) knowingly or recklessly post, link to or transmit, or permit third party users to post, link to or transmit:
  1. any material that is abusive, threatening, harmful, malicious, defamatory, obscene, pornographic, profane or otherwise unlawful;
  2. any material containing a virus or other hostile computer program;
  3. it will not post, link to or transmit any material that constitutes or encourages a criminal offence, gives rise to civil liability or infringes the intellectual property rights of any third parties.
- c) knowingly or recklessly transmit, or permit third party users to transmit unsolicited email in breach of UK law including the Privacy and Electronic Communications (EC Directive) Regulations 2003

The Company may suspend the Customer's Service(s) immediately and without notice to the

Customer in its sole discretion if in the Company's opinion the Customer has or has knowingly, recklessly or negligently permitted any breach of the Acceptable Usage Policy, or if it receives any complaint that unsolicited email has been transmitted by the Customer, or by the Customer's agents or customers, or if any material hosted on the Customer's web site(s) or server(s) (in respect of which the Company is providing a hosting service) may be unlawful, harmful or defamatory.

The Company may disclose the Customer's name and address to a complaining third party if in our reasonable discretion it is necessary or appropriate to do so, for example if there is evidence of a prima facie case that the Customer's web site(s) or server(s) in respect of which the Company is providing a hosting service is infringing the rights of a third party.

#### **Anti-virus**

The Company uses third party anti-virus software to protect the servers and email from viruses. Although all reasonable care is taken by the Company to ensure that the anti-virus software is up to date, the Company makes no warranty as to the effectiveness of its third party anti-virus software and excludes any loss or damage caused by a virus which infects any electronic device, computer, PC, server or network owned or used by the Customer.

#### **Networks**

The Company will use reasonable skill and care to ensure that the network provided is protected from being interfered with by unauthorised third parties and that anti-virus software is used to protect the network from viruses. However, the Company uses third party hardware and software for the network configuration and anti-virus software cannot guarantee that the Customer's network will be free from hackers or viruses.

#### **Exclusion and limitation of liability**

The fees charged to the Customer under this Agreement are determined on the basis of the following limitations and exclusions of liability. Subject only to any terms agreed in a Service Level Agreement, which sets out additional terms under which the Company provides the Service(s) and in particular sets out the terms of a Service Credit, the Company excludes and shall not be liable for any damage or loss resulting from a) any technical or other failure resulting in unavailability of the web site or applications hosted by the Company's servers (or the servers of third parties which the Company, on behalf of the Customer, has engaged to provide the whole or part of a Service); b) unauthorised access to the Company's servers (or the servers of third parties which the Company, on behalf of the Customer, has engaged to provide the whole or part of a Service); The Company excludes all representations (other than fraudulent representations) and warranties relating to the Services supplied by the Company under this Agreement, whether imposed by statute or operation of law that are not expressly stated in this Agreement.

If the Customer suffers any loss or damage other than as a result of the matters stated above for which all liability is excluded then the Company's total liability for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of Services under this Agreement to the Customer shall be limited to the total amount of fees paid by the Customer to the Company for the Service upon which the claim is based.

In no event shall the Company be liable for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever. The Customer agrees to indemnify the Company against any and all claims brought against the Company as a result of the Customer, through its web site, domain name or other Services purchased from the Company, infringing the rights of third parties.

#### **Confidentiality**

In order to provide the Service(s) the Company will be hosting email and other data on behalf of

the Customer. In order to provide the Service(s), respond to support requests and test systems it may be necessary for employees of the Company to have access to such email and data. Each employee who has such access is has a confidentiality clause in their Contract of Employment with the Company that prohibits them from disclosing to third parties any confidential information save as required by the general law (Court Order or government authority such as police). The Company warrants that all email and data of the Customer will be treated as confidential and will not be disclosed or supplied to any third party unless the Company is ordered to do so by a Court Order or to comply with a government agency.

### **Data Protection**

The Company is registered under the Data Protection Act , registration number Z7879408 and the Company warrants that this registration is kept up to date each year through the notification department of the Information Commissioner's Office.

### **Termination**

This Agreement may be terminated by either party giving the other 30 days written notice.

The Customer may terminate a particular Service under this Agreement without terminating the Agreement itself by giving 30 days written notice. If the Customer terminates a Service this Agreement will continue in force in respect of any other Services provided by the Company to the Customer. Furthermore, the obligation of the Customer to pay fees for the Contract Term in respect of the Service terminated continues to subsist in accordance with this Agreement.

If the Agreement or a Service is terminated prior to the expiry of the Contract Term for a Service the Customer is liable to pay the remaining fees for the Service for the full Contract Term.

The Company may terminate this Agreement and/or suspend any and all services to the Customer (including web hosting and email) without notice and with immediate effect if:

- a) the Customer fails to abide by the Company's payment terms or is in fundamental breach of this Agreement or
- b) the Customer manifests an intention not to comply with the terms of this Agreement or not to pay fees due.

Either party may terminate this Agreement with immediate effect and without notice if the other party goes into insolvent liquidation or other form of administration or bankruptcy.

### **Customer Security Responsibilities**

The Customer is solely responsible for any breaches of security affecting Desktops or Managed Servers under the Customer's control. The Customer must maintain vigilance of password management and access management to limit the risks to their system.

If a Customer's server is involved in an attack on another server or system, it will be shut down and an immediate investigation will be launched to determine the cause/source of the attack. In such event, the Customer is responsible for the cost to rectify any damage done to the customer's server and any other requirement affected by the security breach.

### **Modification**

The Company reserves the right to add, delete or modify any provision of its Terms of Use at any time without notice.

### **General**

Notices under this Agreement must be in writing but can be transmitted by fax, email or post. In the case of post notices will be deemed to have been received 1 business day after sending if posted first class or 2 business days after posting if posted second class; in the case of fax or email notice will be deemed to have been received on the same business day provided that the fax or email are sent before 5pm.

Any waiver by the Company of any of its rights under these terms and conditions shall not prevent the Company from later enforcing that right or enforcing any of its rights pursuant to these terms and conditions.

If any provision of these terms and conditions is held void, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the terms and conditions had been agreed with the void provision(s) eliminated.

Neither party will be liable for any breach of its obligations resulting from an Event of Force Majeure.

These terms and conditions shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.