

1 DEFINITIONS

- 1.1 "Access" means access to the Server on which Your Site is located by means of the file transfer protocol or by other methods so as to alter the files stored on the Server.
- 1.2 "Access Procedures" means instructions provided by the Company relating to the use and limitations of Access.
- 1.3 "Agreement" means the Schedule and these terms.
- 1.4 "Company" means Asckey Data Services Limited.
- 1.5 "Charges" means the combination of the charges in clause 5.
- 1.6 "Customer" means the party listed on the Schedule under the heading "The Customer".
- 1.7 "Equipment" means the Company's equipment to be let to you (but which remains the property of the owner), which is listed on the Schedule.
- 1.8 "Expiry Period" means one month prior to the expiry of the Agreement period.
- 1.9 "ISP" means an Internet Service Provider.
- 1.10 "Materials" means text, image, audio, video, HTML language, CGI scripts, Java or JavaScript applications or language, ActiveX controls, Pearl, ASP Pages or any other information, data or software which you have on Your Site.
- 1.11 "Server" means a computer server administered by the Company that may be either dedicated to Your Site or shared with the Company's other customers.
- 1.12 "Services" means the services listed in the Schedule. If any Equipment is listed on the Schedule, then the hire of such Equipment is included within the Services.
- 1.13 "Site" means a site on the World Wide Web having an individual Internet address commencing "http://" which has Materials accessible to the general Internet by means of the hypertext transfer protocol or other relevant Internet protocol and any email addresses associated with it.
- 1.14 "Your Site" means the Site the Company is hosting for you in accordance with this Agreement.
- 1.15 'Normal working hours' are between 8.30am and 5.00pm Monday to Thursday and 8.30am and 4.00pm on Friday, excluding public holidays.
- 1.16 "Confidential Information" means all information confidential to the Customer whether relating to the Customer's business, customers or its customer's business, patients, contacts, clients, suppliers or otherwise but excluding information now or at any time hereafter becoming generally known or accessible to the general public (unless due to the default of the Company hereunder) and information obtained by the Company from a third party free of restrictions on use or disclosure.

2 YOUR OBLIGATIONS

- 2.1 Access – the Company will give you (the Customer) appropriate Access to Your Site or Server to enable you to update the Materials. Use of Access is at your own risk. You agree to use Access only in accordance with the Access Procedures. If you use Access other than in accordance with the Access Procedures or you use Access carelessly or negligently you may cause Your Site or the Server to fail. In such case, the Company reserves the right to charge you for repair of any damage you cause to the Server or another customer's Site and you agree to pay such charge.
- 2.2 Materials – you are responsible for all Materials and any materials uploaded to Your Site or the Server using Access. You warrant that none of the Materials on Your Site will contain any statement or content that is obscene, indecent, libellous, seditious, offensive, defamatory, threatening, abusive, liable to incite racial hatred, discriminatory, blasphemous, in breach of confidence or privacy or in respect of which you are not the true and lawful owner of the copyright or trade mark as the case may be or for which you have not obtained all necessary licences and/or approvals. You also warrant that any postings shall not be contrary to the law of, or infringe the rights of a third party enforceable in, any part of the United Kingdom, the European Union, the United States of America or the Commonwealth.
- 2.3 Indemnity – you shall indemnify the Company and keep the Company free from and effectively indemnified against all costs, claims, expenses and liabilities arising in connection with any action, claim, demand or allegation which arises as a result of the Company providing the Services to you, or breach of clause 2.2 above or clause 2.4 below. The Company agrees to immediately provide you with notice of all such claims and the Company hereby grants you full conduct of the claim with the ability to defend, settle and compromise all actions. The Company shall provide at your expense all reasonable assistance necessary to handle any claim and you agree that any action taken in respect of such claims will be taken with consultation with the Company.
- 2.4 Domain Names – If the Company acquires a domain name for the customer, the Company is acting in the capacity of the customer's agent, the contract for the registration being between you the customer and the appropriate Naming Authority.

- 2.5 You the customer shall not use a Domain Name that infringes or may infringe the intellectual property rights of any other person. You confirm and warrant that you are the owner of, or that you have been and are duly authorised by the owner of, any trademark or other name you have requested as part of a Domain Name or which is similar to a Domain Name you have requested. You acknowledge that the Company cannot guarantee that any Domain Name requested will be available or approved for use. In particular Asckey Data Services Ltd gives no warranty that the Internet Domain Name requested will not infringe the rights of any third party and you the client indemnify the company in respect of any such infringements. Any Internet Protocol address allocated by the Company to you shall at all times remain the sole property of the Company and you shall have a personal non-transferrable licence to use such address for the duration of this Agreement. In the event of termination of this Agreement for whatsoever reason, your licence to use the Internet Protocol address shall automatically terminate and thereafter you shall not use such address.
- 2.6 If your application and/or database contain Person Identifiable Data (PID) then it is your responsibility to inform the Company of this fact before your application can be accepted for a hosting service. If you fail to disclose this information and your application/database is subsequently discovered to contain PID, your hosting service will be suspended immediately pending investigation and contract adjustment at your expense. If any data relates to NHS or NHS patients and you require live access to your application or associated database, you will be required to prove your compliance with a minimum of level 2 of 'Connecting for Health Statement of Compliance'. Failure to provide such information upon request may mean a refusal to provide a hosting connection.

3 COMPANY OBLIGATIONS

- 3.1 In consideration for the Charges, the Company shall for the term and on the terms and conditions of this Agreement provide you with the Services:
- 3.1.1 Allocating space on a Server for Your Site and administering (that is "Hosting") Your Site from a Server so that it is capable of being accessed over the Internet.
- 3.1.2 Maintaining Servers at its premises for the use of the Customer. The Owner may determine and maintain the hardware resources and operating software on Servers as it sees fit.
- 3.1.3 Backing up the Materials on Servers on a weekly or otherwise agreed basis noted in the Schedule and restoring Your Site from that backup in the event of a hardware or software failure.
- 3.1.4 Maintain what it considers to be optimum performance for all the Sites (Your Site and those of its other customers) and Servers it hosts.
- 3.2 The Company shall at its own expense maintain Professional Indemnity, Public Liability and Product Liability insurance policies for the duration of the contract of a minimum of £1,000,000. The Company shall, upon request, produce to the Customer copies of its policies of insurance, together with the receipt for the payment of the last premium in respect of each policy, or produce documentary evidence that the policy is in force.

4 BOTH PARTIES AGREE

- 4.1 The Company may temporarily take the Servers off-line or suspend the Services from time to time for essential maintenance work, repair or improvement to its facilities. The Company will notify you at least 48 hours in advance of this necessary work and will use its reasonable endeavours to cause minimum disruption to Your Site or Server. Scheduled work will normally take place out of normal working hours unless previously agreed with the customer. However, there may be temporary access restrictions to Your Site or Server from the general Internet while this maintenance work is taking place.
- 4.2 It is technically impracticable to provide the Services free of faults and the Company does not undertake to do so. Upon receipt of a fault report (by telephone, written notice or email) relating to a fault in the Services, the Company will take reasonable steps to correct the fault.
- 4.3 The Company will use its best endeavours to provide general service cover 24 hours a day 7 days a week. Notwithstanding this, due to the nature of the Internet and the involvement of many third parties in it, such as ISPs and other providers of telecommunications, the Company cannot warrant that the Services will be uninterrupted or error free.
- 4.4 The Company may need to vary the technical specification of the Services for operational reasons provided that you have given consent.
- 4.5 The Company will not be responsible for any inability of yours to access the Services due to incompatibility between your terminal equipment and the Company's equipment.
- 4.6 Breach or dispute of any part of the contract should be notified to the other party in writing and respond within 14 days giving the opportunity to remedy or provide a solution that both parties agree to before taking other actions i.e. Termination.
- 4.7 Where the provision is for the NHS N3 networks both parties must maintain the relevant compliance and environment in accordance with the Information Governance (IG) requirements issued by the NHS Digital for the duration of the contract.

5 CHARGES AND PAYMENTS

- 5.1 The Company shall perform any calculations necessary to compute the correct annual charges. Any adjustment to bring any previously invoiced estimated charges in line with the correct charges will be invoiced at the earliest opportunity.
- 5.2 You shall pay to the Company the Charges for the Services. The Company shall be entitled to suspend performance of any of the Services in the event that you fail to pay in accordance with this clause 5.
- 5.3 The Company will invoice the annual Charges in advance of the month in which they are to be performed for the first time and the Customer will pay in advance of the commencement of the supply of services.
- 5.4 In the event that the Company agrees to accept monthly payments for the supply of services the Company will invoice the charges in advance of the month in which they are to be performed and the Customer will pay by standing order to reach our account no later than 30 days of the invoice date.
- 5.5 The Company reserves the right to invoice for commissioned work additional to the specified hosting contract and undertaken by the Company but not completed as a result of any delays or changes to the requirement or specification initiated by the Customer. All invoices relating to said commissioned work must be settled by the Customer within 30 days of the date of the invoice.
- 5.6 The Customer must notify any disputed item to the Company within 14 days.

6 TERMINATION

- 6.1 You may terminate this Agreement by giving notice a minimum of 30 days prior to the expiry date of this Agreement. If a termination notice in writing to the Company's Commercial Director is not received then the Agreement will be automatically renewed for a further period of the same duration. During the Expiry Period the contract can be renegotiated on new terms.
- 6.2 Either party may terminate forthwith if the other party adopts a resolution for its winding up (unless the same be part of a solvent reconstruction or amalgamation) or if any petition is presented for the appointment of an administrator or a receiver or to wind up the other party or a receiver or an administrative receiver is appointed in respect of any part of the other party's undertaking or assets or if the other party suffers any other action in consequence of debt or if the other party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (or any re-enactment or further enactment thereof) or if the other party makes or attempts to make any arrangement or composition with or for the benefit of its creditors or ceases to carry on business or if any event analogous to any of the foregoing under any foreign jurisdiction occurs.
- 6.3 Either party may terminate if the other party is in breach of this Agreement and in the case of a breach capable of remedy fails to remedy the same or in the case of a breach not capable of remedy to pay reasonable compensation in either case within 14 days of a written notice requiring the defaulting party to remedy such breach or (as the case may be) pay such reasonable compensation (which shall be specified in such notice).
- 6.4 The Company may terminate immediately if you misuse the Services in any way or misuse or allow misuse of Access (which includes but is not limited to the implantation of computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data on the Company's Servers) or other practices of misuse (which shall include but not be limited to hacking) provided that the Company will always contact the Customer and seek to resolve and rectify any issues before exercising such right of termination.
- 6.5 The Company may terminate the agreement at any time by giving notice of 3 months. You, as the customer, accept that you will have no claim for any compensation as a result of our decision to terminate the Agreement.
- 6.6 On termination or expiry of the Contract the Company shall provide reasonable transition assistance free of charge.

7 LIABILITY

- 7.1 The Company warrants that it will perform its obligations under this Agreement with the reasonable care and skill of a competent Internet Hosting Service and that it will endeavour to meet its SLA targets
- 7.2 Subject to 7.1 other than this express warranty, to the maximum extent the Company is permitted by law, the Company will provide you with the Services on the basis that it excludes all representations (excluding fraudulent representations), warranties, conditions and other terms (including without limitation the conditions implied by law of satisfactory quality, fitness for purpose and the use of reasonable care and skill) which but for this Agreement would have effect in relation to the Services.
- 7.3 You acknowledge that the Company has no control over the Materials or over the information and/or software transmitted via the Services and that the Company does not examine the use to which customers put the Services or the nature of the Materials, information and/or software they are sending or receiving. The Company hereby excludes all liability of any kind for the transmission or the reception of any Materials, information and/or software of whatever nature and all liability for the accuracy or inaccuracy of any such Materials, information and/or software.

- 7.4 In no event shall the Company be liable to you or any third party for any indirect, special, incidental or consequential loss or damage, or loss or damage of data, loss of profit, loss of anticipated savings, loss of contract or loss or other economic advantage, arising out of or in connection with or in relation to this Agreement or any collateral contract, or the Services or Equipment even if you have previously been advised of the possibility of the same.
- 7.5 If for any reason The Company is liable to you, then subject to clauses 7.2, 7.3, 7.4 and 7.6, the Company's liability to you or any third party arising out of or in connection with or in relation to this Agreement or any collateral contract or out of the supply, purported supply or non-supply of the Services or Equipment, whether based upon contract, tort (including negligence) or otherwise, shall not exceed the amounts paid to the Company for the Services over the 12 months prior to the event that gave rise to the liability concerned.
- 7.6 However, nothing in this Agreement shall have the effect of limiting or excluding the Company's liability for death or personal injury resulting from its own negligence.

8 PROPERTY RIGHTS

- 8.1 Unless otherwise agreed in writing, you shall own and be responsible for all the intellectual property in the Materials on Your Site or Server and the Company shall not be responsible for the Materials or the intellectual property in them. However, the Equipment will remain the property of the Company at all times.

9 FORCE MAJEURE

- 9.1 Neither party shall be liable to the other under this Agreement and not deemed in breach of the Agreement for failure to carry out its provisions to the extent that such failure is caused by any cause beyond the parties respective reasonable control including, without limitation, fire, war, riot, sabotage, sickness or industrial action.

10 NON-ASSIGNMENT

- 10.1 The benefits and obligations conferred by this Agreement upon you shall not be and shall not be capable of being assigned, delegated, transferred, sub-contracted or otherwise disposed of.

11 DATA PROTECTION

- 11.1 By entering into this Agreement, you agree that any "personal data", as defined by the Data Protection Act 1998 provided to the Company pursuant to this Agreement may be processed by the Company for the following purposes:
- Administration and provisioning of the Services, including support and billing of the Services;
 - To identify and inform you, whether by mail, facsimile, electronic mail or other means of communication of additional services and products available from the Company that may be of interest.
- 11.2 By entering into this Agreement, you represent and warrant that you have drawn the attention of its employees and agents to this clause and have obtained informed and express consent from them to the processing of their data as outlined in clause 11.1.
- 11.3 If you, your employees or agents do not wish to receive further information from the Company, then a request to this effect should be sent to the Company's Commercial Director.

12 GENERAL

- 12.1 Neither party shall be deemed by virtue of this Agreement to be an agent or the partner of the other and each party will make clear in all dealings with third parties that it has no authority to make representations on behalf of the other or to bind the other contractually with any third party.
- 12.2 If any of the terms of this Agreement are held to be void or unenforceable by any reason of law they shall be void or unenforceable to that extent only and no further and all other terms shall remain valid and fully enforceable.
- 12.3 You shall not have any right of set off.
- 12.4 This Agreement may only be varied by written agreement by both parties and with the variation being recorded in writing and being impended to this Agreement.
- 12.5 No indulgence granted by either party to the other in relation to any term hereof shall be deemed a waiver of such term or prejudice the later enforcement of that or any other term hereof.
- 12.6 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 12.7 The Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the English courts.