

Tricostar Software Ltd (Trading as Tricostar) Terms & Conditions

As of Feb 2013

1. SOFTWARE

- 1.1 "Licensed Software" or "Packaged Software" is supplied under the terms of the license agreement attached.
- 1.2 Where the source for the Software is not provided to the Client, Tricostar will on receipt of a written request from the Client, arrange to keep and maintain current a copy of the source code of the Software in Escrow. Any costs associated with the Escrow to be paid for by the Client.
- 1.3 Tricostar warrants the Software is programmed to adapt to and accommodate changes in dates, including the next millennium the year 2000 and leap years without any detriment or deterioration in performance.
- 1.4 Tricostar warrants that it has used its best endeavours during the issuing of the software to ensure that no Viruses are coded or introduced into the software.

2. SERVICES

2.1 GENERAL

- 2.1.1 In consideration of the Price, Tricostar shall provide to the Client the Services described in the Schedules of Supply attached.
- 2.1.2 Where the Client postpones agreed delivery dates for whatever reason and this is agreed by Tricostar in writing, then Tricostar reserves the right to charge all reasonable costs, charges and expenses incurred as a result of such postponement.
 - 2.1.2.1 Days notice of cancellation and/or postponement prior to the commencement of the Services, % of Charges to pay:
 - 16-20 working days 50%
 - 11-15 working days 75%
 - 10 working days or less 100%
 - 2.1.2.2 Any services cancelled or postponed within 20 working days where there are pre booked expenses such as travel or accommodation will be charged at the full rate.
- 2.1.3 The Client shall ensure that all communication concerning the Services is channelled through the Nominated Main Contact and is confirmed in writing. The Client shall inform Tricostar promptly of any change in the identity of the Nominated Main Contact and no change shall take effect unless and until notice in writing thereof has been sent to Tricostar .

2.2 SOFTWARE SUPPORT

- 2.2.1 In consideration of the payment of the Software Support Fee by the Client, Tricostar shall provide application Support only.
- 2.2.2 Unless specific amendments are agreed Tricostar shall provide:
 - 2.2.2.1 a response service during Tricostar 's normal working hours whereby Tricostar will promptly answer telephone or e-mail queries for the Client relating to the Application Software only.

This excludes hardware, operating system, third party desktop applications, networking and infrastructure problems and any environmental changes that have not been subject to a change request submitted to Tricostar prior to any change being initiated. It further excludes any consultative advice which involves business analysis, process management and the modification, correction or audit of client

created workflows. Any support requested or time spent in these in non application areas will be chargeable on a time and materials basis.

- 2.2.2.2 the prompt rectification by telephone advice and/or remote diagnosis of any Software failure
- 2.2.3 Tricostar reserves the right to withdraw its Software Support Service if the Client does not maintain the parity of the version of the Software being used on the Computer Equipment with either one of the two most recently released versions of the Software issued by Tricostar .
- 2.2.4 Subject to sub-clauses 2.2.5 below the Software Support Fee shall be payable annually in advance, the first payment being due in accordance with the Schedule of Payments and annually thereafter.
- 2.2.5 The Software Support Fee and/or the Software Maintenance Fee may from time to time be increased by Tricostar by adding thereto on any due date for payment a sum which reflects the reasonable increase in costs to Tricostar to provide such Software Support Service, but will normally not exceed 5% per annum.
- 2.2.6 Support for application software developed for the Client by Tricostar shall only be supplied on an annual retainer and time related basis where support time is consumed throughout the annual support period up to the maximum amount of support time purchased by the Client. The charges and maximum amount of support time included within this service is specified in the Support Definition Document. If the maximum support time consumed is exceeded then Tricostar will charge for additional time.
- 2.2.7 Tricostar shall be entitled to be reimbursed by the Client for its reasonable costs of time and expenses incurred in connection with installing new or enhanced versions of third party packaged software, provided that the same are made available to Tricostar by the third party. The Software Support Fee excludes the costs of any necessary installation or training associated with such enhanced versions.
- 2.2.8 If the Nominated Contact has not received appropriate training or has forgotten training given then Tricostar shall charge the Client and the Client shall pay for such Services at Tricostar 's standard rate plus and incurred expenses
- 2.2.9 All user generated changes to the application must be tested on the test server and approved in writing by Tricostar to come within the support agreement.

3. PRICES

- 3.1 Subject to the provisions set out below the Prices are respectively fixed at the rates shown in the Schedule of Payments, exclusive of all reasonable expenses and disbursements incurred.
- 3.2 Tricostar shall have the right to make reasonable adjustment to the Price of the Software and/or the Services (as the case may be) for any reasonable increase in the cost of either or both of them after the date of the Contract but prior to the Delivery Date, by sending notice of such increase not later than 30 days before the Delivery Date if either:
 - 3.2.1 Delivery has not taken place within 6 months after the date of the Contract because the Client refuses or is not ready to accept Delivery; or
 - 3.2.2 it is specified in the Contract or Tricostar Proposal acceptance document that such Prices are subject to adjustment.
- 3.3 Tricostar shall not be entitled to increase the Price of the Software and/or Services where such increase results from any fault on the part of Tricostar .
- 3.4 All Prices and the Software Support Fee are quoted exclusive of Value Added Tax or any successor tax thereto.

4. PAYMENT

- 4.1 The Client agrees to pay Tricostar the Price for the supply of the Software and the Services in accordance with the payment terms specified in the Contract;
 - 4.1.1 All services and/or software ordered by the client will be invoiced and paid in full within 12 months of the contract being signed, even if the client has declined to take delivery of the services and/or software; unless otherwise agreed in the contract's payment terms.
- 4.2 Unless otherwise specified in the Contract, all accounts shall be paid within 28 days of the date of the invoice.
- 4.3 No dispute of a minor or trivial nature arising under the Contract or howsoever shall interfere with the prompt payment of the account by the Client which in the case of such disputes shall not be entitled to exercise any rights of set-off or counterclaim against the invoices submitted.
- 4.4 Without prejudice to the foregoing provisions Tricostar shall be entitled to charge interest of the rate of 3% per annum above the base rate from time to time of HSBC Bank PLC or its successors in title from the due date of payment on all or any part of sums remaining unpaid, the charge to be calculated on compound basis at the end of each month.

5. TERMINATION

- 5.1 The Contract and/or The Licence and/or the Software Support Service may be terminated forthwith upon the occurrence of the earliest of the undermentioned events provided that except in the case of sub-clause 5.1.3 no such termination will have effect until notice in writing to terminate has been received by one party from the other:
 - 5.1.1 by Tricostar upon failure by the Client to pay any sum due hereunder within 28 days of the due date therefore and such sum remains unpaid for 14 days after written notice from Tricostar that such sum has not been paid (such notice to contain a warning of Tricostar 's intention to terminate);

- 5.1.2 by either party if the other commits any material breach of any term of these terms and conditions (other than that falling within 5.1.1) and which (in the case of a breach capable of being remedied) shall not have been remedied within 28 days of a written request to remedy the same
- 5.1.3 by either party if the other:
- (a) convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement concerning the other party within Part 1 of the Insolvency Act 1986, or acquiesces in a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) that other's creditors; or
 - (b) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or ceases to or threatens to cease to carry out its business; or
 - (c) has a trustee, receiver, administrator, administrative receiver or similar officer appointed in respect of all or any part of the business or assets that party; or
 - (d) has a petition presented or a meeting convened for the purpose of considering a resolution, or other steps are taken, for the winding up of or for making an administration order (otherwise than for the purpose of an amalgamation or reconstruction approved by the first-mentioned party);
- 5.1.4 by either party within six (6) months of distress or execution being levied against any property of the other;
- 5.2 The Software Support and Maintenance Service may be terminated by either the Client or Tricostar giving at least 12 months' notice in writing to the other party to expire at any time after the Support Term set out in the Schedules of Supply attached.
- 5.3 Any termination of the Contract, the Licence or the Software Support Service pursuant to this clause 5 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

6. FORCE MAJEURE

Neither party shall be under any liability for any failure to perform or observe its obligations hereunder or for any loss or damage caused wholly or in part by war, civil commotion, act of God, the operation of any regulation or order made by any statutory authority, fire, explosion, accident, shortage of supplies or by any act done or omission pursuant to a trade dispute, whether such dispute involves the party's employees or not, or by any fact, occurrence, circumstance or action beyond its reasonable control, save that this clause shall not apply to any failure on the part of the Client to make payment of any sum due to Tricostar .

7. DELIVERY

Any date for Delivery quoted by Tricostar is estimated for the guidance of the Client. Tricostar shall use all reasonable endeavours to meet any such date quoted.

As part of the delivery of the project Tricostar will agree with the customer a project plan. Any deviation from the plan will be subject to a change request form and any costs associated with any agreed change will be chargeable at Tricostar's then current rates.

8. LIABILITY

- 8.1 The Price and the Software Support Fee have been fixed on the basis of the following limitations and exclusions of liability.
- 8.2 The following provisions set out Tricostar's entire liability (including any liability for the act, omissions, negligence and defaults of its employees, agents or sub-contractors) to the Client in respect of:
- 8.2.1 any breach of its contractual obligations arising under the Contract;
 - 8.2.2 any representation, statement or tortious act or omission, or breach of statutory duty, including negligence arising under or in connection with the Contract or the Software Support Service; and
 - 8.2.3 any damage to property.
- 8.3 Any act, omission, negligence or default on the part of Tricostar or its employees, agents or sub-contractors falling within sub-clause 8.2 above shall for the purpose of this clause 8 be known as an 'Event of Default'.
- 8.4 Tricostar's liability to the Client for death or personal injury resulting from its own or that of its employee's, agent's or sub-contractor's negligence shall be unlimited.
- 8.5 Subject to the limit set out in sub-clause 8.6.1 below Tricostar shall accept liability to the Client in respect of damage to the tangible property of the Client resulting from the negligence of Tricostar or its employees, agents or sub-contractors.
- 8.6 Tricostar's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to:
- 8.6.1 £2,000,000 in the case of an Event of Default falling within sub-clause 8.5 above; and
 - 8.6.2 the aggregate of the Price of the Software and the Services and the Software Support Fee in the case of any other Event of Default.
- 8.7 Subject to sub-clause 8.4 above Tricostar shall not be liable to the Client in respect of an Event of Default for:
- 8.7.1 loss of anticipated profits, revenues, anticipated savings, goodwill or business opportunities; or
 - 8.7.2 wasted executive or consultants' time in monitoring the Installation of the Software; or

- 8.7.3 any other type of special, indirect or consequential loss even if such loss was reasonably foreseeable or Tricostar had been advised of the possibility of the Client incurring the same.
- 8.8 Tricostar is not liable to the Client for any loss of data held by the Client (whether before or after termination of the Contract, the Licence or the Software Support Service) or the re-instatement of the same.
- 8.9 In so far as the output from the Software is dependant on the accuracy and correctness of the input data, no liability shall attach to Tricostar in respect of any loss or damage arising from or in consequence of incorrect use of the Software..
- 8.10 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise only to one claim hereunder.
- 8.11 The Client hereby agrees to afford Tricostar not less than 28 days (following the notification thereof in writing by the Client) in which to remedy any Event of Default hereunder.
- 8.12 Except in the case of an Event of Default arising under sub-clause 8.4 above Tricostar shall have no liability to the Client in respect of any Event of Default unless the Client shall have served notice in writing of same upon Tricostar within two years of the date upon which it became aware of the circumstances giving rise to the Event of Default or of the date when it ought reasonably to have become so aware.
- 8.13 Nothing in this clause shall confer any right upon the Client to which it would not otherwise be legally entitled.

9. REFUSAL TO ACCEPT PERFORMANCE

- 9.1 The Client acknowledges that upon signature of the Contract Tricostar will enter into obligations with third parties concerning the Software and/or the Software Support Services and/or the Services and refusal by the Client to accept performance of the Contract or any provision thereof shall constitute a breach of contract.
- 9.2 Such refusal by the Client will only be accepted by Tricostar on condition that all reasonable and unrecoverable costs (including staff costs), liabilities and expenses incurred by Tricostar up to the time of such refusal and all profits lost by Tricostar as a result of such refusal are reimbursed to Tricostar by the Client forthwith.

10. REPRESENTATION

No representation or statement (except written representations or written statements of fact) relating specifically to the Contract made by any representative of Tricostar or the Client prior to the date hereof shall be binding, provided that nothing contained herein shall purport to exclude or limit Tricostar's liability where such exclusion or limitation is prohibited, void or unenforceable under English law.

11. ENTIRE AGREEMENT

- 11.1 The Contract constitutes the entire agreement between the parties and no addition to or modification to the same shall form part of the Contract unless expressly accepted in writing by duly authorised representative of Tricostar .
- 11.2 Notwithstanding the above, nothing in these terms and conditions shall limit or restrain in any way Tricostar 's right to sell, transfer, assign, license or lease all or any part of the Software to any third party.

12. NOTICES

Any notice or statement required to be given hereunder shall be deemed to be validly given (in the case of the Client) if served personally on the Client or sent to or left at the address of the Client last known to Tricostar or (in the case of Tricostar) if sent to or left at the registered office for the time then being of Tricostar . Any such notice sent shall be sent by prepaid by first class post and shall be deemed to have been received 48 hours after the time of posting.

13. ASSIGNMENT

- 13.1 Neither party shall be entitled to assign, sub-licence, charge or otherwise dispose of or grant rights or obligations over, out of or under the Contract, the Licence or the Software Support Service without the prior written consent of the other party.
- 13.2 Notwithstanding sub-clause 13.1 Tricostar reserves the right to sub-contract any of its obligations under the Contract in whole or in part.

14. PARTNERSHIPS etc.

- 14.1 Where the Client is a partnership the obligations entered into by the Client under the Contract shall be deemed to have been entered into by all the partners for the time being of the Client.
- 14.2 Where the expression 'the Client' includes two or more persons the obligations and liabilities of the Client under the Contract shall be joint and several and any reference to the Client shall include a reference to any one or more of them.

15. DISPUTES

- 15.1 Tricostar and the Client shall meet to discuss and resolve all matters not specifically provided for in these terms and conditions and which require a decision, and all differences, disputes or disagreements ("Disputes") which may arise. If Tricostar and the Client are still unable to resolve any such matters they shall reconvene for further discussions within 48 hours of the previous meeting. If they are still unable to resolve such matters at the reconvened meeting, then the matters shall be referred to the Managing Director of Tricostar and the Managing Director or equivalent of the Client for a decision.
- 15.2 If despite clause 15.1, any Dispute cannot be resolved between the parties, Tricostar and the Client shall attempt in good faith to resolve the dispute through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution.
- 15.3 If the matter has not been resolved by an ADR procedure within 60 days of the initiation of such procedure, the dispute shall be settled by reference to a single arbitrator the identity of whom shall be agreed between the parties or if the parties fail to agree on the identity of the arbitrator, within 14 days after either party's request to the other therefore, the arbitrator shall be appointed, at the instance of either party applying, by the President of the British Computer Society. The provisions of the Arbitration Acts 1950-1979 shall apply to any arbitration under this Agreement.
- 16. LEGISLATION**
All references to statutes in these terms and conditions shall be deemed to apply equally to any re-enactment or modification thereof.
- 17. WAIVER OF REMEDIES**
No relaxation, forbearance, delay or indulgence by Tricostar in enforcing any of the terms and conditions herein contained, nor the granting of time by Tricostar shall prejudice, affect or restrict the rights and powers of Tricostar hereunder, nor shall any waiver by Tricostar operate as a waiver of any subsequent or continuing breach of such terms and conditions.
- 18. INVALIDITY AND SEVERABILITY**
18.1 If any of these terms and conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such term or condition shall not affect the other terms and conditions hereof and all such terms and conditions not affected by such invalidity or unenforceability shall remain in full force and effect.
18.2 The Parties hereby agree to attempt to substitute for any invalid or unenforceable term or condition a valid enforceable term or condition which achieves to the greatest extent possible the economic, legal and commercial objectives underlying the invalid or unenforceable term or condition.
- 19. JURISDICTION**
These terms and conditions and any documents forming part of the Contract between Tricostar and the Client shall be governed by and construed in accordance with English law to the exclusive jurisdiction of whose courts Tricostar and the Client hereby submit.
- 20. CONFIDENTIALITY**
20.1 The Client acknowledges and agrees that:
20.1.1 the Software and any Course Materials constitute confidential trade secrets of Tricostar or Tricostar's third party licensors; and
20.1.2 all intellectual property rights in the Software and the Course Materials (including without limitation all patent, design, copyright, trade mark and trade secrets) are and shall remain the confidential, proprietary property and information of Tricostar and/or Tricostar's third party licensors.
20.2 Tricostar and the Client undertake to each other:
20.2.1 to keep confidential all Business Information of the other party;
20.2.2 not to disclose the whole or any part of the Business Information to any third party without the other's written consent, except that each of the parties may disclose the Business Information to those of its employees involved in the performance of its obligations under these terms and conditions and who need to know the Business Information; and
20.2.3 to use the Business Information solely in connection with the performance of the party's obligations under these terms and conditions and not for its own benefit or for the benefit of any third party.
20.2.4 When the client sends client confidential data to Tricostar, Tricostar will only accept responsibility for that data when it has been sent only to Tricostar's office by registered delivery and the client has confirmed in writing that Tricostar is permitted to hold that data for an agreed term
20.3 The provisions of this clause 20 do not apply to the whole or any part of the Software, the Course Materials or the Business Information which is:
20.3.1 trivial or obvious;
20.3.2 already in the other's possession other than as a result of a breach of this clause; or
20.3.3 in the public domain.
20.4 Tricostar and the Client undertake to each other to make all relevant employees, agents and sub-contractors aware that the Software, the Course Materials and the Business Information are confidential and of the provisions of this clause 20 and (without limitation) to take all reasonable steps from time to

- time to ensure that their employees, agents and sub-contractors comply with the provisions of this clause 20.
- 20.5 The Client undertakes to Tricostar that during the term of the Licence and for the period of 6 months for following termination or expiry of the Licence or in the case of application software developed for the Client by Tricostar a period of 36 months following the Delivery Date it will not directly or by its agent or in any other way and whether for its own benefit or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment without permission in writing from the Directors of Tricostar. Where such an approach is made and accepted without the written permission of Tricostar, the Client agrees to compensate Tricostar by payment of an amount equal to one year's remuneration of the relevant officer or employee plus any recruitment costs incurred by Tricostar for the replacement of the same.
- 20.6 This clause 20 will continue in force after the Contract is terminated for whatever reason.

21. GENERAL

- 21.1 Where there is a conflict between these terms and conditions and any conditions of purchase imposed by the Client, then unless agreed otherwise and evidenced in writing these terms and conditions shall take precedence.

22. DATA PROTECTION OF PERSONAL DATA

- 22.1 Words and phrases which are defined in the Data Protection Act 1998 (the "DPA") and used in this Agreement shall have, unless the context otherwise requires, the same meanings when used in this Agreement.
- 22.2 In relation to any Personal Data disclosed by the Client to Tricostar :-
- 22.2.1 (a) the Client shall at all times while the Client continues to process such Personal Data act as and maintain the role of the owner and data controller of such Personal Data; and
- 22.2.2 (b) Tricostar shall at all times while it continues to process such Personal Data act as and maintain the role of data processor of such Personal Data and shall only process the Personal Data as instructed in writing by the Client and in accordance with this Agreement.
- 22.3 The Provider shall not process Personal Data except on the written instructions of the Client which shall include, without limitation, acting in accordance with the terms of this Agreement.
- 22.4 Tricostar shall acquire no rights, title or interest in the Personal Data which shall vest and remain vested solely in the Client;
- 22.5 Tricostar shall implement appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of or damage to the Personal Data acting as if it were a data controller in compliance with the DPA.
- 22.6 For the purposes of this Agreement technical and organisational measures required of Tricostar shall include such other technical and organisational measures which the Client may decide, at its reasonable discretion, are appropriate for the purposes of this Agreement.
- 22.7 Tricostar shall not disclose any Personal Data other than to its officers, employees, its permitted agents, consultants, sub-Providers and their employees who reasonably require the same in order for Tricostar to perform its obligations pursuant to this Agreement. Tricostar shall also take all reasonable steps to ensure the reliability of those of its officers, employees, permitted agents, consultants, sub-Providers who may have access to the Personal Data.
- 22.8 Subject to the Client giving not less than two (2) Business Days' prior written notice, Tricostar shall permit the Client access to Tricostar's premises, personnel and records for the purpose of inspecting, testing and auditing the technical and organisational measures and Tricostar's compliance with this Agreement and the Agreement.
- 22.9 Tricostar shall promptly implement any requirement made by the Client to ensure that the technical and organisational measures comply with the DPA.
- 22.10 Tricostar shall ensure that its employees, its permitted agents, consultants, sub-Providers and their employees shall maintain proper records of the processing of the Personal Data and of all training carried out by it with regard to the DPA.
- 22.11 Tricostar shall not cause or permit the transfer of any of the Personal Data outside the European Economic Area except with the prior written consent of the Client and in accordance with any additional terms the Client may impose on such transfer.
- 22.12 Tricostar shall not disclose the Personal Data to any third party in any circumstances other than in compliance with the written instructions of the Client or at the specific request of the Client or in compliance with a legal obligation.
- 22.13 Tricostar shall inform the Client immediately if the Provider becomes aware or suspects that Personal Data has been disclosed to an unauthorised person.

HOSTING AGREEMENT

between

TRICOSTAR
and

<< THE CLIENT >>

AS OF << THE DATE >>

AGREEMENT

between

(1) **TRICOSTAR**, at The Business Innovation Centre, Innova Buisness Parrk, Electric Avenue, Enfield, EN3 7XU ("**the Company**")

and

(2) **<<THE CLIENT >>** ("**the Customer**").

THE PARTIES HAVE AGREED AND DO HEREBY AGREE as follows:-

1 INTERPRETATION

In this Agreement, the following words and phrases shall have the following meanings:-

"Acceptable Use Policies" means all such rules, regulations and guidelines which concern the Services and/or the Customer's use of the Services as the Company may, from time to time, publish on the Website (the existing Acceptable Use Policies can be accessed at <http://www.tricostar.com/aup>)

"Charges" means the charges payable by the Customer to the Company for the provision of any of the Services (or any part thereof), details of which are set out in Part 3 of the Schedule and which may vary from time to time in accordance with Clause 15.4;

"Commencement Date" means the date of the last signature to this Agreement;

"Content" all documents, data, models, brochures, designs, plans, drawings, sketches, databases, technical drawings, maps, blueprints, images (moving or still), photographs, exhibition stands, paintings, sounds, videos, photographic film (including negatives), fonts, typefaces, logos, banners, items, materials and things whatsoever (however stored or recorded) which may be stored on or transmitted, conveyed or received by the Equipment from time to time in connection with or as a result of the Company providing the Services to the Customer;

"Contract Year" means a period of 365 days during the continuance of this Agreement, the first of such periods beginning on the Commencement Date and each subsequent period beginning on the anniversary thereof;

"Equipment" means any computer equipment (including all Dedicated Servers) owned or otherwise operated or controlled by the Company from time to time;

"Hosting Service" means the website and/or software application and/or data (as the case may be) hosting service to be provided by the Company to the Customer pursuant to this Agreement, as more particularly described in Part 2 of the Schedule and in Clause 4;

"Initial Contract Period" means the period specified in Part 1 of the Schedule;

"Initial Registration Period" means the period of two years for UK Domains and one year for Generic Domains commencing on and including the date of application for registration;

"Intellectual Property Rights" means all trade marks (registered and unregistered) patents, registered designs, and applications and the right to apply for any of the foregoing, copyright, design right, topography and mask rights, database rights, utility model rights, rights in the nature of copyright, know-how, rights in proprietary and confidential information, rights in inventions and all other industrial, commercial and intellectual property rights and all other rights or forms of protection having equivalent or similar effect to any of the foregoing arising anywhere in the world;

"Management Service" means the services to be provided by the Company to the Customer in terms of Clause 7 and Part 4 of the Schedule.

"Naming Organisation" means Nominet UK (see www.nominet.org.uk) in respect of all UK Domains and means ICANN in respect of all Generic Domains, or such other person or organisation as the Company may specify to the Customer from time to time in respect of any UK Domain or Generic Domain;

“**Services**” means the services to be provided by the Company to the Customer under this Agreement (which may include the Hosting Service, the Domain Name Service and/or the Management Service), and “**Service**” means any one of them;

“**Software**” means any software installed on the Dedicated Server by or on behalf of the Company for the purpose of enabling the Company to provide for that service;

“**UK Domain**” means an internet domain name ending with the country code top-level domain.uk; and

“**Website**” means the Company’s website, which can be accessed at <http://www.tricostar.com>.

In this Agreement:-

the singular includes the plural and the masculine gender shall import the feminine gender and vice versa;

references to persons shall include bodies corporate, unincorporated associations and partnerships;

references to any “**Clause**” is a reference to the relevant clause of this Agreement, reference to any

“**Part**” is to the relevant part of the Schedule and reference to the “**Schedule**” is to the schedule attached to and forming part of this Agreement, all unless otherwise specified;

the headings to Clauses are for convenience of reference only and shall not affect the interpretation of this Agreement; and reference to any party in these terms and conditions shall be deemed to include a reference to its successors, permitted transferees and permitted assignees; and

unless the context otherwise requires, any reference to “**writing**” or cognate expressions includes a reference to fax, email or comparable means of communication.

2 THE CONTRACT

- 2.1 This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter thereof and supersedes any previous arrangement, understanding or agreement (whether written or oral) between the parties relating to such subject matter.
- 2.2 Subject to the terms and conditions of this Agreement, no waivers, variations or modifications of this Agreement shall be binding on the Company unless and until they have been confirmed in writing by the Company.
- 2.3 The Company may, without the need for recourse to or approval of the Customer, vary this Agreement and/or the Acceptable Use Policies from time to time PROVIDED THAT the Company gives at least 7 days prior written notice to the Customer.. Any variations shall take effect 7 days after the Company posts the variations to the Website or otherwise notifies the Customer in writing of such variations. The Customer’s continued use of the Services shall constitute acceptance of such variations.

3 THE SERVICES

- 3.1 In consideration of the Charges and subject to the terms of this Agreement, the Company hereby agrees to provide the Services to the Customer throughout the duration of this Agreement. The Company shall start providing the Services as soon as reasonably practicable but in any event within 30 days of the Commencement Date (inclusive) failing which the Company will, subject to Clause 5.9, refund all Charges to the Customer.

4 THE HOSTING SERVICE

- 4.1 The Hosting Service comprises making available for the exclusive use of the Customer (via remote access only) of a dedicated computer server with root or administration rights (hereafter, a “**Dedicated Server**”). If the subject matter of this Agreement is a **server**, the Customer shall receive memory capacity from the Company on the server hardware
- 4.2 The server functions granted to the Customer by the Company are made available based on software operation. The Customer is not entitled to services utilising specified parts of the CPU or the main memory.
- 4.3 Administrative access or “root” access to the Dedicated Server is limited to the Customer and its authorised agents. The Company reserves the right to require, at its discretion, software and/or hardware upgrades for the purposes of maintaining security and stability of services provided by the Company generally and may require the installation of such upgrades. The Customer shall pay to the Company all Charges which the Customer may determine from time to time, and notify the Customer either in writing or by posting details of same to the Website.
- 4.4 The Customer shall procure that the Dedicated Server uses software configurations that conform with all such specifications and requirements as the Company may determine from time to time and notify the Customer either in writing or by posting details of same on the Website. Use of any particular software

configuration may be declined at the sole discretion of the Company. The Customer has no right or expectation to receive a hardware or software configuration on the Dedicated Server that is more capable than that which was initially ordered from the Company. The Customer cannot expect to receive support from the Company with respect to the correction of software and/or hardware and/or technical problems caused by mistakes, faulty settings and installation errors caused by the Customer.

- 4.5 The Customer hereby acknowledges and agrees that the Customer may (at the Company's sole discretion, acting reasonably) become liable to pay additional Charges to the Company in the event that, as a result of or in connection with the provision of the Hosting Service to the Customer, the aggregate amount of data transmitted to the internet from the Dedicated Server or the aggregate amount of data received by the Dedicated Server from the Internet in any given 30 day period exceeds the data transfer limits specified in Part 2 of the Schedule.

5 SECURITY

- 5.1 Except with respect to issues concerning the physical security of the Company's premises or any other premises at which any Dedicated Server is located from time to time, the Customer hereby acknowledges and agrees that the security of the Dedicated Server (and of any Content stored thereon) is a joint responsibility of the Company and Customer. The Company will be responsible for updating and securing software initially supplied with the server. Under no circumstance will the Company be held liable for security breaches and/or any losses, damages, claims, costs (including legal costs) and/or expenses suffered or incurred by any person arising out of or in connection with the Customer's failure to maintain adequate security protocols in the administration of the Dedicated Server or any failure of the Customer to comply with its obligations under this Clause 6.1.
- 5.2 The Customer agrees that if the security of the Dedicated Server is compromised in any way, the Customer will notify the Company in writing as soon as practicably possible following the Customer becoming aware of the relevant security compromise. The Customer hereby acknowledges and agrees that if the Company believes or suspects that any security breaches have occurred in connection with the Dedicated Server, the Company has the right to suspend access to the Dedicated Server pending an investigation and/or resolution of the breach. The Customer also agrees that the Company has the right (and, in fact, may be required by law) to cooperate in any government or legal investigation regarding any aspect of the Services, including any computer servers used by the Customer. The Company shall not be liable to the Customer for any losses, damages, costs (including legal costs), claims or expenses arising out of or in connection with the exercise by the Company of its rights under this Clause 6.1.
- 5.3 The Company shall not be liable to the Customer in any way for any losses, damages, costs or expenses suffered or incurred by the Customer which results from or arising out of any loss of or damage to any Content and/or data, regardless of how such loss of or damage to such Content and/or data occurs except where such loss or damage results from negligence on the part of Tricostar, its employees, agents or sub-contractors.

6 THE MANAGEMENT SERVICE

- 6.1 The Company will perform the Management Service for the Customer where Part 4 of the Schedule specifies that the Company will perform, or the Company has otherwise agreed in writing to perform, such Service.
- 6.2 The Management Service comprises the Company, subject to this clause 7:-
- 6.2.1 policing the operating system and all other software installed by the Company on the Dedicated Server with a view to ensuring that the Dedicated Server functions properly as a computer server and is kept up to date;
- 6.2.2 configuring the Dedicated Server in accordance with the Customer's reasonable requirements for a pre-agreed number of hours per calendar month; and
- 6.2.3 otherwise carrying out all such monitoring, maintenance, repairs and administration in respect of the Dedicated Server as may be necessary to ensure that the Dedicated Server functions and continues to function within normal parameters in all material respects.
- 6.3 For the purposes of clause 7.2.2, the number of hours in each calendar month shall be the number specified in Part 4 of the Schedule or as otherwise agreed between the parties in writing.
- 6.4 Where the Company has agreed to do so, the Company will also back-up the Customer's Content with such regularity and in such a manner as may be specified in Part 4 of the Schedule.
- 6.5 The Management Service shall be subject to such limitations and restrictions as may be set out in Part 4 of the Schedule and as the Company may notify the Customer in writing from time to time.

7 TECHNICAL SUPPORT

- 7.1 The Company shall provide the Customer with technical support in respect of the Dedicated Server by telephone and email only, and in accordance with Part 5 of the Schedule.

8 COMPANY WARRANTIES

- 8.1 The Company warrants to the Customer that it shall perform the Services with reasonable skill and care. Any claim by the Customer which is based on any breach of this warranty shall be notified to the Company in writing within fourteen days from the date of the provision of the Services to which such breach relates. The Company shall, unless otherwise provided by statute, not be liable to the Customer in any way if the Customer fails to notify any claim within that period. Where any valid claim is made in accordance with the provisions of this Clause 9.1 in respect of any of the Services the Company shall be entitled to re-execute the relevant part of the Services (or such part as is in question) or, at the Company's sole discretion, refund to the Customer the relevant price of such Service (or the appropriate proportion thereof), but, unless otherwise provided by statute and subject to the terms and conditions of this Agreement, the Company shall have no further liability to the Customer.
- 8.2 **Network Warranty:** The Company warrants to the Customer that the aggregate amount of Network Downtime in any calendar month shall be less than the length of time specified in Part 2 of the Schedule ("the **Network Downtime Limit**"). In this Clause 9.2, "**Network Downtime**" means time during which computers on the internet generally are unable to send data to and receive data from the Dedicated Server for reasons other than:-
- 8.2.1 the fault or failure of any computer equipment, network equipment or telecommunications equipment which is not owned or controlled by the Company, its suppliers or subcontractors; or
 - 8.2.2 the acts, omissions, fault or negligence of the Customer or any third party (being any person other than the Company, its employees, agents, suppliers and subcontractors); or
 - 8.2.3 a Hardware Failure (as defined below); or
 - 8.2.4 the carrying out of scheduled maintenance and repairs on any of the Equipment by the Company; or
 - 8.2.5 a Force Majeure event.

The Customer's sole remedy for breach of this warranty shall be that, for each whole hour of Network Downtime in any calendar month over and above the Network Downtime Limit, the Customer shall be entitled to be refunded 5% of the Charges for the Hosting Service in respect of the calendar month in which such Network Downtime occurs, up to a maximum refund of the entirety of such Charges. Any claim by the Customer which is based on any breach of this warranty shall be notified to the Company in writing within fourteen days from the end of the calendar month in respect of which the Network Downtime which is the subject of the claim occurs. The Company shall, unless otherwise provided by statute, not be liable to the Customer in any way if the Customer fails to notify any claim within that period.

- 8.3 **Hardware Warranty:** The Company warrants to the Customer that in the event of computers on the internet generally being unable to send data to and/or receive data from the Dedicated Server as a direct result of any Hardware Failure, the Company shall repair or replace the hardware component(s) in question within 8 hours (the "**Response Time**") of the fault or failure of such components being diagnosed by the Company. For this purposes of this Clause 9.3, a "**Hardware Failure**" means a fault arising in, or the complete failure of, any hardware component forming part of the Dedicated Servers. The Customer's sole remedy for breach of this warranty shall be that, for each complete hour over and above the Response Time in any calendar month, the Customer shall be entitled to be refunded 5% of the Charges for the Hosting Service in respect of the calendar month in which the Hardware Failure occurs, up to a maximum refund of the entirety of such Charges. Any claim by the Customer which is based on any breach of this warranty shall be notified to the Company in writing within fourteen days from the end of the calendar month in respect of which the Hardware Failure which is the subject of the claim occurs. The Company shall, unless otherwise provided by statute, not be liable to the Customer in any way if the Customer fails to notify any claim within that period.
- 8.4 Other than the warranties set out in Clauses 9.1, 9.2 and 9.3 all warranties (including implied warranties), statements, claims or representations in respect of the Services are hereby excluded to the fullest extent permitted by law, including (without limitation) any warranties, claims or representations:-
- 8.4.1 relating to satisfactory quality, fitness for a particular purpose or infringement of title;
 - 8.4.2 arising from the course of dealing, usage or trade practice; or
 - 8.4.3 that the Services will be uninterrupted, error free or completely secure.
- 8.5 The Customer hereby acknowledges and agrees that it has not been induced to enter into this Agreement in reliance upon any warranty, representation, statement, agreement or undertaking of any kind (whether negligently or innocently made) of any person other than as expressly set out in this Agreement as a warranty. Nothing in this Clause 9.5 shall, however, operate to limit or exclude any liability for fraud.
- 8.6 Where any event gives rise to the Customer being entitled to claim for breach of more than one of the warranties given in this Clause 9, the Customer shall only be entitled to claim under one of such warranties. The warranty in this Clause 9 the Customer shall be entitled to claim under shall be determined by the Company.

9 LIMITATIONS OF THE SERVICES

- 9.1 The Customer hereby acknowledges and agrees that the Company does not and cannot control the flow of data to or from the Company's own network and the internet at large. Such flow depends on the performance of computer and telecommunications networks, services and equipment provided or controlled by third parties over whom the Company has no control and whose actions or omissions may impair or disrupt the availability and/or performance of the Services by the Company.
- 9.2 The Customer hereby acknowledges and agrees that the Company shall not be required to monitor or exercise control over any Content, including (without limitation) for the purposes of assessing whether such Content infringes the rights of third parties or violates any applicable laws or regulations. The Customer hereby acknowledges and agrees that such matters are the sole responsibility of the Customer and that use of the Services is entirely at the Customer's own risk.
- 9.3 The Customer hereby acknowledges and agrees that it is the Customer's sole responsibility to scan Content for viruses in accordance with Clause 12.1.3 and that the Company shall not be required to scan any data on the Equipment for viruses and other "malware" (i.e. malicious computer programs).

10 DURATION

- 10.1 This Agreement shall commence on the Commencement Date and shall continue thereafter (subject to Clauses 14.3 and 21) for the Initial Contract Period. Subject to Clauses 11.2, 14.3 and 21 below, this Agreement shall automatically renew at the end of the Initial Contract Period, and shall continue to automatically renew thereafter every 365 days, for a further period of 365 days (the Initial Contract Period and each of such subsequent consecutive 365 day periods being hereinafter referred to as a "**Contract Period**").
- 10.2 The Customer can prevent this Agreement from automatically renewing at the end of any Contract Period (thus terminating this Agreement with effect from the end of the relevant Contract Period) by giving notice in writing to the Company at least 60 days before the end of the relevant Contract Period.

11 CUSTOMER'S OBLIGATIONS

- 11.1 At all times throughout the duration of this Agreement, the Customer shall:-
 - 11.1.1 where the Customer is a company or organisation, appoint one person to act as a contact for the Customer in the Customer's dealings with the Company which relate to this Agreement and the Customer shall ensure that such person is authorised to negotiate on behalf of the Customer and shall notify the Company in writing in the event that the Customer wishes to appoint another person in such person's place;
 - 11.1.2 only use the Services for lawful purposes and in accordance with this Agreement;
 - 11.1.3 as soon as practicably possible before any Content is uploaded to the Dedicated Server, scan such Content for computer viruses and other "malware" (i.e. malicious computer programs) in accordance with best computing practice from time to time;
 - 11.1.4 on demand, promptly provide the Company with all such information, data and documents, and promptly do all such acts and things, as may be reasonably necessary to enable the Company to assess whether the Customer is complying with the terms of this Agreement;
 - 11.1.5 keep private and confidential all login details, passwords and other security information received from the Company in connection with the Services ("**Security Details**") and notify the Company as soon as practicably possible following the Company becoming aware that any of such Security Details have been disclosed to and/or been used by an unauthorised third party;
 - 11.1.6 comply with the Acceptable Use Policies and all other reasonable instructions and directions of the Company from time as to the Customer's use of the Services and/or the Dedicated Server;
 - 11.1.7 back-up all data (including computer programs and databases) which the Customer may have stored from time to time on the Dedicated Server on a daily basis or more frequently if required by best computing practice from time to time unless the Company has agreed to do this on the Customer's behalf.
 - 11.1.8 ensure that the Customer complies with all relevant laws and obligations (including, without limitation, those of any territory in which (i) the Customer has a place of business or trades and/or (ii) the Content and/or the Customer's website is accessed or made available);
 - 11.1.9 ensure that all data uploaded to the Equipment is "server ready", which is in a form requiring no additional manipulation or alteration by the Company. The Company will make no effort to validate any of this data for correctness, usability or otherwise;
 - 11.1.10 promptly provide the Company with all such information and assistance as the Company may reasonably request from time to time to enable it to fulfil its obligations under this Agreement; and
 - 11.1.11 take all such reasonable measures and precautions in accordance with best computing practice and guidance from time to time to secure and protect the Customer's own equipment from damage, interference, unauthorised access and malicious computer programs (such as computer viruses).
- 11.2 At all times throughout the duration of this Agreement, the Customer shall not:-

- 11.2.1 (except to the extent permitted by this Agreement) modify or alter the Equipment or Software without the prior written consent of the Company;
- 11.2.2 make use of the Services to send, transmit, make available, copy, retransmit, broadcast or publish (whether directly or indirectly) in whatever form any data, information, contractual rights, materials or statements which:-
 - 11.2.2.1 infringe the Intellectual Property Rights, contractual rights or statutory rights of any third party; or
 - 11.2.2.2 breach any laws relating to defamation, libel, contempt, blasphemy, infringement of privacy or personal data right and any equivalent or related laws in any territory in which they are or may be accessed or made available;
- 11.2.3 make use of the Services to send or cause to be sent, forwarded, transmitted, transferred or relayed unsolicited commercial email or otherwise engage, participate or facilitate the activities commonly known as "spamming" or "mail bombing";
- 11.2.4 without prejudice to Clause 12.2.2 above, use the Services to obtain, offer or permit to be offered or obtained (for profit or otherwise) any material, images (static or otherwise), videos, displays or services which are of an erotic, pornographic, illegal or immoral nature, or which are otherwise in breach of any legal obligation;
- 11.2.5 do any act or thing which place, or is like to place, an excessive processing load on the Equipment;
- 11.2.6 do any acts or things which cause, or are likely to cause, the Company to breach any agreements between the Company and third parties, or to unreasonably interfere with the Company's other customers' use of the Services;
- 11.2.7 use the Services in a manner which infringes a third party's Intellectual Property Rights; or
- 11.2.8 use the Equipment to operate an open mail relay.

12 CUSTOMER WARRANTIES

- 12.1 The Customer warrants to the Company that:-
 - 12.1.1 where the Customer is an individual, he or she is at least 18 years of age; and
 - 12.1.2 any person signing this Agreement on behalf of the Customer has the necessary authority to do so and to enter into this Agreement on behalf of the Customer.

13 RIGHTS OF THE COMPANY

- 13.1 Notwithstanding Clause 10.2, the Company shall nevertheless be entitled to monitor and inspect the Content and the content of the information stored or otherwise present on the Equipment from time to time and (without any liability whatsoever to the Customer) do all such acts and things and take all such steps as the Company (in its sole discretion, acting reasonably) considers necessary or appropriate to protect or promote the legitimate interests of the Company and/or its customers, agents, employees, officers and representatives which include (without limitation) the proper functioning of the Equipment, the ability of the Company to provide the Services and to enable the Company to comply with all applicable laws and regulations. Without limitation, the Company may:-
 - 13.1.1 issue warnings to the Customer;
 - 13.1.2 modify, remove or add data on or from the Equipment provided the Company shall first give reasonable notice to the Customer;
 - 13.1.3 limit, terminate or suspend the Customer's access to any of the Services and/or the Customer's ability to use and/or access the Equipment provided the Company shall first give reasonable notice to the Customer;
 - 13.1.4 suspend performance of the Services;
 - 13.1.5 limit the bandwidth or quantity of data applicable to the Customer's account;
 - 13.1.6 disclose data and information to third parties about the Customer and/or the Customer's use of the Services (including, without limitation, the Customer's name and contract details, IP addressing and traffic information, usage history and content residing on the Equipment); and/or
 - 13.1.7 report any activity that it suspects violates any law or regulation to appropriate law enforcement agencies, industry regulators or other appropriate third parties.
- 13.2 The Acceptable Use Policies govern the general policies and procedures for use of the Services. The Acceptable Use Policies are posted on the Website (or such other location as the Company may specify from time to time) and may be varied from time to time in accordance with Clause 2.3.
- 13.3 The Company reserves the right to make changes to the Services from time to time (including, without limitation, any limitations as to the amount of data which may be transferred in a given period in connection with the Hosting Service or the bandwidth used in the performance of the Hosting Service) by giving 7 days notice of same to the Customer in writing. The Customer shall have the right to terminate this Agreement with immediate effect by giving notice in writing to the Company prior to the end of such notice period.

14 TERMS OF PAYMENT

- 14.1 In consideration for the Company providing the Services, the Customer shall pay the Charges (together with any applicable Value Added Tax, and without any set-off or other deduction).
- 14.2 Part 3 of the Schedule sets out the time and manner in which the Charges are to be paid to the Company by the Customer. To the extent that Part 3 of the Schedule does not provide otherwise:
 - 14.2.1 the Customer shall pay Charges to the Company within 30 days of the Company's invoice therefor; and
 - 14.2.2 the Company shall be entitled to invoice the Customer in respect of Charges at any time before the calendar month in which they are incurred.
- 14.3 All Charges are quoted exclusive of VAT and other applicable sales taxes, which the Customer shall also be liable to pay to the Company.
- 14.4 The Company reserves the right to increase any of the Charges from time to time by giving at least 30 days notice to the Customer in writing.
- 14.5 If the Customer fails to pay any of the Charges on the due date for payment thereof, the Company shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 4% above the base rate from time to time of The Royal Bank of Scotland PLC from the due date until the outstanding amount is paid in full.
- 14.6 Where the Customer pays any amounts due to the Company under this Agreement by credit card or debit card, the Company reserves the right to charge the Customer an additional charge equal to 1.5% of such amount.

15 INTELLECTUAL PROPERTY

- 15.1 The Customer hereby grants to the Company (insofar as it is able to do so) a non-exclusive, worldwide, transferable, sub-licensable, perpetual and irrevocable licence in respect of all Content to do all such acts and things as may be necessary to enable the Company to provide the Services and/or exercise its rights under this Agreement. To the extent that is not able to grant such a licence in respect of any Content, the Customer shall procure that such a licence is granted to the Company by any third party who may hold any Intellectual Property Rights in respect of any such Content.
- 15.2 The Customer shall save, indemnify, defend and hold harmless the Company on demand from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of, any infringement or alleged infringement of any Intellectual Property Rights of any third party subsisting in any Content or which is otherwise related in any way to the Customer's use of the Services or any part thereof. For the avoidance of doubt, the Company shall not be required to investigate the ownership of any Intellectual Property Rights in any Content.
- 15.3 Except to the extent expressly provided by this Agreement, nothing in this Agreement shall grant, assign or otherwise transfer to the Customer any right or interest in any Intellectual Property Rights in respect of the Software or Equipment.

16 THE EQUIPMENT

- 16.1 Ownership of the Equipment shall remain with the Company and the Customer shall have no right thereto.
- 16.2 For the avoidance of doubt, the Customer shall not be entitled to have physical access to any Equipment or to any premises at which any of the Equipment resides from time to time. The Company shall not be required to disclose the location of any of the Equipment to the Customer.
- 16.3 The Customer shall indemnify the Company forthwith on demand from and against any losses, damages, costs and expenses suffered or incurred by the Company as a result of or arising out of damage to the Equipment arising out of any breach by the Customer of its obligations under this Agreement and/or the fault or negligence of the Customer.

17 THE SOFTWARE

- 17.1 The Company hereby grants to the Customer a revocable, non-exclusive, non-transferable, non-sub-licensable licence to (subject to the terms and conditions of this Agreement) use the Software on the Dedicated Server throughout the continuance of this Agreement.

18 LIABILITY

- 18.1 Subject to the terms and conditions of this Agreement, the Company hereby excludes all liability to the Customer, to the fullest extent permitted by law, in respect of any claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature suffered or incurred by the Customer in connection with or arising out of:-

- 18.1.1 any corruption, theft or loss of, or damage, alteration or destruction to, data, programs, files, information or materials held on the Equipment;
- 18.1.2 any unauthorised access by a third party (regardless of the manner or means by which such third party gains such unauthorised access);
- 18.1.3 any temporary delay, outages or interruptions of the Services, howsoever caused;
- 18.1.4 the selection use and suitability of the Services by the Customer;
- 18.1.5 any breach by the Customer of its obligations under this Agreement; and
- 18.1.6 any exercise by the Company of its rights under this Agreement and/or under law.
- 18.2 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company or its officers, employees, consultants, sub-contractors, agents or otherwise) which arise out of or in connection with the provision of the Services except as expressly provided in this Agreement.
- 18.3 Except in respect of death or personal injury caused by the Company's negligence and except as otherwise specifically provided by law, the entire liability of the Company under or in connection with this Agreement shall not exceed the aggregate of all the Charges paid by the Customer to the Company in the period of 6 months prior to the date of the relevant event or occurrence giving rise to the liability.
- 18.4 The Customer shall save, indemnify, defend and hold harmless the Company forthwith on demand from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of, any breach by the Customer of its obligations under this Agreement.

19 SUSPENSION

- 19.1 The Company shall have the right to suspend performance of the Services (or any of them) by notice to the Customer in the event that the Customer makes default in or commits any breach of its obligations to the Company under this Agreement.
- 19.2 If any Services are suspended pursuant to this Clause 20, any additional costs reasonably incurred by the Company as a direct result shall be recoverable by the Company from the Customer.

20 TERMINATION OF THE CONTRACT

- 20.1 In the event that:-
 - 20.1.1 the Customer makes default in or commits any breach of its obligations to the Company under this Agreement; or
 - 20.1.2 the Customer commits an act of bankruptcy, becomes apparently insolvent, makes an arrangement or composition with creditors or (being a company) has a receiver, administrator or liquidator appointed or any proceedings have commenced relating to the insolvency or possible insolvency of the Customer; or
 - 20.1.3 the Customer ceases to trade, threatens to cease to trade or if serious doubt arises as to the Customer's solvency; or
 - 20.1.4 any diligence, distress, execution or other process shall be levied or enforced against any property of the Customer,then in such case the Company shall be entitled (without prejudice to its other claims and rights under this Agreement and without liability to the Customer whatsoever) to do one or more of the following without giving notice to the Customer:-
 - 20.1.5 terminate this Agreement immediately; and/or
 - 20.1.6 deny the Customer use of and/or access to any of the Equipment;
 - 20.1.7 terminate or suspend performance of any one or more of the Services.
- 20.2 Without prejudice to Clause 21.1, the Company may terminate this Agreement or any of the Services for any reason whatsoever upon giving 30 days notice in writing to the Customer.
- 20.3 The Customer may terminate this Agreement immediately:
 - 20.3.1 if the Company breaches any of its obligations to the Customer under this Agreement and (if capable of remedy) fails to remedy such breach within 14 days after being required by written notice from the Customer to do so; or
 - 20.3.2 within 7 days of the Company sending a notice to the Customer pursuant to Clause 2.3 (unilateral variation of this Agreement by the Company).

21 EFFECT OF TERMINATION OF THIS AGREEMENT

- 21.1 In the event of termination of this Agreement pursuant to Clause 21 all sums due or which may become due to the Company by the Customer under this Agreement shall become immediately due and payable.
- 21.2 In the event of termination of this Agreement by the Customer, the Customer shall remain liable to the Company in respect of all Charges which have accrued up to and including the date of termination.

- 21.3 Without prejudice to Clause 22.1, all licences granted by the Company to the Customer pursuant to this Agreement shall be immediately revoked without notice being required for the purpose upon termination of this Agreement for any reason.
- 21.4 For the avoidance of doubt, upon termination of this Agreement or the Hosting Service, all computer servers (including all Dedicated Servers) shall remain the property of the Company and all rights which the Customer may have in respect of such computer servers (and any data or other content stored on such computer servers) shall immediately cease.

22 DATA PROTECTION

- 22.1 In this Clause 23, the phrases “**data controller**”, “**data processor**”, “**processing**” “**personal data**” and “**data subject**” shall all have the meanings given to them in the Data Protection Act 1998 and, except where the context otherwise requires, similar words and phrases shall be interpreted accordingly.
- 22.2 The Customer hereby acknowledges and agrees that the Customer is the data controller, and the Company is merely a data processor, in respect of any personal data that may be processed by the Company in the course of providing the Services to the Customer. The Customer agrees to comply at all times with the Data Protection Act 1998 and to save, indemnify, defend and hold harmless the Company forthwith on demand from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of any infringement or alleged infringement of the Data Protection Act 1998 by the Customer or the Company in connection with the Services.

23 RELATIONSHIP OF THE PARTIES

- 23.1 Each party to this Agreement is an independent contractor, and this Agreement does not create a partnership, agency, joint venture or employment relationship between the Company and the Customer.

24 SEVERABILITY

- 24.1 Every term of this Agreement shall be separate and severable to the extent that if one clause or part thereof shall be unenforceable for any reason the other clauses and other parts of the clause and this Agreement respectively shall remain effective.

25 SURVIVAL

- 25.1 In the event that any term or condition of this Agreement is held to be invalid by any court having jurisdiction over this Agreement, that term or condition may be deleted from this Agreement and the remaining terms and conditions shall continue to be, to the extent that they are unaffected by the deletion and to the fullest extent permitted by law, valid and binding on the parties hereto.
- 25.2 Any term or condition of this Agreement which is of the kind or nature which could reasonably be expected to survive termination of this Agreement shall so survive.

26 COMPLAINTS

- 26.1 The Company wishes the Customer to know that it takes any complaints the Customer might have seriously. Any complaints which the Customer might have regarding the Services, this Agreement or any matter related thereto should be sent to the postal address, fax number or email address set out at Clause 31 below, or such other address, fax number or email as the Company may notify to the Customer from time to time.

27 NO WAIVER

- 27.1 No waiver by the Company of any breach of this Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

28 FORCE MAJEURE

- 28.1 The Company shall not be deemed to have breached this Agreement or otherwise be liable to the Customer for any refund or otherwise for any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to Force Majeure or any other cause beyond the Company's reasonable control. For the purposes of this Clause 29.1, “**Force Majeure**” means any Act of God, explosion, flood, tempest, lightning strike, fire, accident, war or threat of war, sabotage, terrorist act, insurrection, civil disturbance or requisition, acts, restrictions,

regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargos, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, parts, machinery, power failure or breakdown in machinery.

- 28.2 Without prejudice to Clause 29.1 above, the Company shall have no liability to the Customer whatsoever (for breach of contract or otherwise):-
- 28.2.1 in the event that the Equipment is disabled, removed from the Company's premises or otherwise compromised as a result of or in connection with the actions of any law enforcement agency; or
- 28.2.2 in the event that the Company is prevented from providing any of the Services in accordance with this Agreement as a result of any judgement of any legal authority or order of any court of competent jurisdiction.

29 ASSIGNATION AND SUB-CONTRACTING

- 29.1 The Company may assign or license any or all of its rights and/or obligations under this Agreement, or sub-contract the whole, or any part thereof to any person (legal or otherwise) or entity. Unless otherwise agreed in writing with the Company, the Customer may not assign or license or sub-licence any or all of its rights and/or obligations under this Agreement, or sub-contract the whole, or any part thereof to any person (legal or otherwise) or entity.

30 NOTICES

- 30.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent (by first class pre-paid post, facsimile transmission, email or comparable means of communication) to the other party at, in the case of the Customer, to the address, fax number or email address specified in Part 1 of the Schedule and, in the case of the Company, to:

address: TRICOSTAR
The Business Innovation Centre
Innova Buisness Park
Electric Avenue
Enfield
EN3 7XU

fax number: +44 (0) 208 350 1351

email: info@tricostar.com

or, in the case of either party, to such other address, fax number or email address as either party may notify to the other for the purposes of this Clause 31.1.

- 30.2 Any notice or other information given by post pursuant to Clause 31.1 which is not returned to the sender as undelivered shall be deemed to have been given on the day after the envelope containing the same was so posted and proof that the envelope containing any such notice or information was properly addressed, prepaid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.
- 30.3 Any notice or other information sent by facsimile transmission, email or comparable means of communication shall be deemed to have been duly sent on the date of transmission, provided that the sender is able to provide evidence that the transmission was sent to the correct fax number, email address or other address (as the case may be) and that there are no circumstances of which the sender subsequently became aware which would lead a reasonable person to conclude or suspect that such transmission was not in fact received.
- 30.4 Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the party to be served at its registered office or to such other address as may from time to time be notified in writing by the party concerned.

31 GOVERNING LAW AND DISPUTES

- 31.1 The Company is a member of the Communications & Internet Services Adjudication Service ("the Scheme"). Any dispute arising out of or in connection with this Agreement shall be referred in the first instance to arbitration by IDRS Ltd in accordance with the rules of the Scheme from time to time. The current rules of the Scheme can be found at <http://www.cisas.org.uk/Rules.asp>.

31.2 This Agreement is governed by Scots law. The parties hereby submit themselves to the non-exclusive jurisdiction of the Scottish courts.

THIS IS THE SCHEDULE IN 5 PARTS REFERRED TO IN THE FOREGOING HOSTING AGREEMENT BETWEEN TRICOSTAR AND THE CUSTOMER.

PART 1 – GENERAL DETAILS

The Customer

Customer name (or company name):

Registered office address:

Telephone number:

Fax number:

Email:

Contact:

The Initial Contract Period

1 year

PART 2 – THE HOSTING SERVICE

Specification of the Services

<<To be completed>>

Name of hosting product:

Data transfer limits (per month):
The Servers:

The Software:

Network Downtime Limit per server

PART 3 – CHARGES AND PAYMENT PROVISIONS

Schedule of Charges and payment terms

Hosting Service

<<To be completed>>

Management Service

Not Applicable.

Domain Name Service

Not Applicable.

Other Charges

£0.75 per month, per one GB of additional data transfer.

PART 4 – THE MANAGEMENT SERVICE

About the Management Service

Is the Management service to be provided: Yes

Number of hours per calendar month for which the Management Service will be provided: 1 hour

Back-up of the Customer's data: Daily Server Backup with 7 days of data retention.

Restrictions and limitation concerning the Management Service

Tricostar's hoster server provider will maintain and patch the supplied server software, and make changes to the server configuration as per your requirements.

PART 5 – TECHNICAL SUPPORT

Support may be obtained by the following means:

E-Mail

support@tricostar.com

Telephone

+44 208 292 2660

On Call Mobile: +44 07740 354452