
Terms and Conditions

1 General

This Agreement is made between the Company and the Customer for the provision of the services described in the Order Form in accordance with the following terms and conditions.

2 Definitions and interpretation

In this Agreement:-

- 2.1 the following words and expressions shall have the meanings assigned to them below:-

"Agreement" means this agreement comprising these terms and conditions, the Order Form, the AUP and the SLA (if any) and the Service Description. In the event of any conflict between the terms of this Agreement, the provisions of the Service Description shall prevail;

"AUP" means the Acceptable Use Policy the current copy of which may be found at <http://www.expat-email.com>;

"the Customer" means the person, firm or company identified as such in the Order Form;

"the Company" means Expat Email Limited (a company registered in England and Wales under no. 05140609) whose registered office is at Bridge House, 11 Creek Road, East Molesey, Surrey KT8 9BE; and whose offices are at PO Box 9, Winterslow, Salisbury SP5 1RS. Telephone number +44 8700 631510.

"the Commencement Date" means the date the Service is fully delivered to the Customer;

"CDD" means Circuit Delivery Date;

"the Equipment" means any hardware, cabling, peripherals, software or any other equipment that the Company shall provide to the Customer as part of the Service and includes the SIP Phone Units, provided that it shall exclude equipment that has been sold outright to the Customer.

"the Fees" means the Subscription Fee, Set Up Fee, VOIP Fee and any Usage Charges, together being the amounts payable by the Customer for provision of the Service as set out in the Order Form;

"Force Majeure" means any circumstances beyond reasonable control including but not limited to Acts of God, fire, lightning, explosion, flood, extreme weather conditions, outbreak of hostilities (whether war be declared or not), riot, civil disorder or commotion, acts of terrorism, industrial disputes or acts or defaults of any local or central Government or other competent authority;

"Internet Services" means the provision of dial-up, broadband, email, domain hosting and domain registration services to be provided by the Company as specified in the Order Form, but specifically excluding the provision of Telephony Services **"Minimum Written Notice Period"** means the periods set out in clause 10.3;

"Order Form" means the order form signed by the Customer forming part of this Agreement;

"Scheduled Interruption" means any interruption to the Service which is announced by the Company via mailing lists, web page or newsgroups;

"the Service" means the services to be provided by the Company as specified in the Order Form and refers to both Telephony Services and Internet Services;

"Service Description" means a service description appended to and forming part of this Agreement;

"Service Interruption" means an interruption to the Service resulting from a hardware failure or a failure of the underlying network facilities (under the direct control of the Company) used to provide connectivity to the Service and which is neither a Scheduled Interruption nor caused (directly or indirectly) by any act or omission of the Customer;

"the SIP Phone Unit" means the Customer premises telephone apparatus sold to the Customer for use with the Telephony Services

"SLA" means the Service Level Agreement, the current copy of which may be found at <http://www.expat-email.com>;

"Set Up Fee" means the amount payable by the Customer for setting up the Service;

"Subscription Fee" means the amount payable by the Customer for continued use of the Service;

"Telephony Services" means the provision of voice over internet protocol services utilising the broadband data connections for the routing of voice calls to be provided by

the Company as specified in the Order Form but specifically not including Internet Services

"Usage Charges" means variable charges calculated by reference to the Customers monthly usage of the Service;

"VOIP Fee" means the service fee payable per month in accordance with the Order Form for the provision of the Telephony Services and is inclusive of all costs and associated costs of all off-net calls.

"Working Day" means 09.00 to 17.00, Monday to Friday (excluding UK bank and public holidays);

"Restricted Information" means all documents, materials and other information, whether technical or commercial passing between the Company and the Customer as a result of entering into or performing its obligations under this Agreement that is not already in the public domain and freely available to the Customer;

- 2.2 words denoting the singular shall include the plural and vice versa;
- 2.3 words denoting one gender shall include all other genders;
- 2.4 references to numbered clauses are to clauses so numbered in this agreement; and,
- 2.5 the headings are for convenience only and shall not affect the interpretation or construction of these terms and conditions.

3 Service

- 3.1 In consideration of the payment by the Customer of the Fees and subject to the compliance by the Customer with the terms and obligations set out in this Agreement, the Company shall provide the Service during the continuance of this Agreement in accordance with clause 4.
- 3.2 If the Customer requires the services and facilities comprised in the Service to be altered, the Customer may request the same in writing, but the Company shall not be obliged to alter such services and facilities unless it has first agreed in writing so to do. If the Company does so agree, it may do so on such terms and conditions as it deems appropriate.
- 3.3 When the Service so requires, the Company will liaise with the Internet IP numbering authorities to register a block of IP numbers for Customer use. These will only be available while the Customer maintains this Service with the Company and may from time to time be subject to such change or restrictions as the numbering authorities or the Company determine.
- 3.4 When the Service so requires, the Company will liaise with the relevant domain administering facilities to register or transfer a domain name for Customer use. For all domains in the '.uk' namespace, the customer must agree to the terms and conditions at <http://www.nominet.org.uk/nominet-terms.html>. The Customer is responsible for ensuring that the domain has been registered accurately and for updating their contact details whenever appropriate (such as if the Customer's address changes).
- 3.5 If, to enable the Company to provide the Service, the Customer hires or licences Equipment from the Company, the Customer acknowledges that any and all such Equipment remains the property of the Company at all times and title in those goods remains with the Company. The Customer further acknowledges that it does not have any title to the Equipment and the Customer is not entitled to sell or otherwise dispose of the Equipment, except as expressly permitted by the provisions of this Agreement.
- 3.6 In respect of the Telephony Services, the Customer hereby acknowledges and understands that:-
 - 3.6.1 they may not offer all of the features of a conventional phone line (for example, but without limitation, access to premium rate numbers and directory enquiry services);
 - 3.6.2 they may sometimes be unavailable as a result of events over which the Company has no control (for example, but without limitation, the weather, power disruptions or failures of the internet service or broadband connection) and that in such circumstances all Telephony Services (including public emergency call services) will be unavailable;
 - 3.6.3 they may not connect the Customer to the public emergency call services. However, if connection to the emergency services is enabled, the Customer

acknowledges that calls will fail if there is a power cut or the broadband connection fails;

- 3.6.4 they may not provide your telephone number and location details to the emergency call services operator if the Company does connect the Customer to the public emergency services;
 - 3.6.5 they may not offer the Customer the ability to transfer their existing number to an alternative service if their service ends;
 - 3.6.6 there is a risk that data generated, stored and transmitted or used via or in connection with the service may be irretrievably damaged or lost if there is a fault or on suspension or termination;
 - 3.6.7 if the Customer purchases SIP Phone Units from the Company or an authorised agent of the Company that the Company will own full title in those SIP Phone Units from the date of full payment and that the SIP Phone Units will only work in connection with the Telephony Services and must be used exclusively for the purpose for which they are designed;
 - 3.6.8 the telephone number for use with the Telephony Services will remain the property of the Company and the Company hereby reserves the right to withdraw or change the telephone number giving at least 14 days written notice and the Company will not be responsible for any costs incurred by the Customer if it does become necessary to change the telephone number; and,
 - 3.6.9 it is not a Publicly Available Telephone Service (PATS), is subject to different regulatory treatment than a Public Available Telephone Service (PATS) and this may limit or otherwise affect the Customer's rights of redress before regulatory agencies such as OFCOM in the UK.
- 3.7 On termination of this Agreement, for any reason, the Customer hereby agrees to return any and all Equipment to the Company as detailed in clause 6.7.

4 Term

- 4.1 Subject to the right of earlier termination by the Company under clause 10, this Agreement shall remain in force for the following periods ("the Initial Period"):-
 - 4.1.1 in respect of the Internet Services; a period one year from the Commencement Date unless otherwise stated; and,
 - 4.1.2 in respect of the Telephony Services; a period three months from the Commencement Date.
- 4.2 Thereafter, subject to the provisions of clause 10, this Agreement shall automatically renew for successive periods of one month.

5 The Company's rights and obligations

- 5.1 The Company may from time to time give such instructions about use of the Service as it deems reasonably necessary in the interests of safety or to preserve the quality of service to its other customers. Any such instructions shall, whilst they are in force, be deemed to form part of this Agreement.
- 5.2 Subject to compliance by the Customer with the terms and obligations set out in this Agreement, the Company shall provide the Service on a 24-hour per day basis, seven days a week provided that:-
 - 5.2.1 access to the Service may, from time to time, be restricted to perform Scheduled Interruptions allowing repairs, maintenance and archiving;
 - 5.2.2 the Company shall not be liable for any Service Interruption other than as provided by clause 7.9;
 - 5.2.3 in order to assist with the identification of misuse or abuse of the Internet or to ensure the smooth running of and identify faults in its network and/or the rest of the Internet, the Company shall have the right to examine the

Customer's use of the Service and to disclose such use to third parties for legal, statutory or other purposes; and

- 5.2.4 the Company shall have the right, upon reasonable notice, to send an engineer or agent to the Customer's premises to undertake any maintenance that the Company deems necessary in pursuance of providing the Service and the Customer hereby authorises all such engineers or agents to enter upon such premises for such purposes.

6 Customer's obligations

- 6.1 The Customer shall at all times use the Service in accordance with the AUP and bring it to the attention of its authorised users and shall indemnify and keep indemnified the Company from any losses, liabilities, damages, claims, costs (including legal costs) and expenses incurred in consequence of a breach of this clause.
- 6.2 The Customer shall neither itself, nor permit any other person, to use the Service:-
- 6.2.1 to send or receive any material which is abusive, indecent, obscene, defamatory, racist, offensive, menacing or in breach of confidence, copyright or any other intellectual proprietary rights or which contains unlawful security devices, viruses, worms, Trojans or any other malicious data or disabling or harmful devices which contravenes any laws;
 - 6.2.2 to cause annoyance, inconvenience or needless anxiety;
 - 6.2.3 other than in accordance with the acceptable use policies of any connected networks including the Internet;
 - 6.2.4 to send unsolicited advertising or mail shots of any kind;
 - 6.2.5 to post off-topic, or off-charter postings to user net newsgroups;
 - 6.2.6 to cause a disproportionate level of activity (i.e. for Telephony Services more than 2 concurrent channels per phone number) without providing the Company with at least fourteen day's written notice whereupon the Company reserves the right to move the Service to a dedicated service and charge the Company's then current rate or terminate some or all of the Service forthwith; or,
 - 6.2.7 in a manner that is inconsistent with any and all applicable laws and regulations.
- 6.3 Unless otherwise specified in the Service Description, the Customer is responsible for backup of its own files and the Company does not offer recovery facilities as a service to the Customer.
- 6.4 This Agreement is personal to the Customer and accordingly, the Customer may not, without the prior written consent of the Company, assign, transfer or "sub-let" its rights under this Agreement or any part of the Service.
- 6.5 The Customer is solely responsible for obtaining the appropriate licences for, and undertaking the appropriate maintenance of, any software necessary for use of the Service and the Customer agrees to comply with any terms and conditions governing the use of such software.
- 6.6 In the event that the Company as part of the Service provides software, the Company hereby grants a personal, non-exclusive licence for the term of this Agreement to the Customer to use such software solely for the use of the Service under this Agreement.
- 6.7 In the event that any Equipment is provided by the Company as part of the Service, the Customer agrees that it will take good care of such Equipment (as if it were the owner of the Equipment) and the Customer hereby undertakes (at the Customer's own expense) to return the Equipment to the Company on termination or expiry of this Agreement in the same condition as it was in when received by the Customer (fair wear and tear excepted). The Customer further agrees that failure to return the Equipment in good condition or at all will incur a surcharge on the Customer's final invoice equal to the purchase price of the Equipment.
- 6.8 Unless otherwise agreed in writing between the parties, the Customer is solely responsible for its own and any third party software, programs and data; the

maintenance of the same; the output there from; and for ensuring that such items are (if applicable) properly licensed, including (if necessary) being licensed for use by the Company.

- 6.9 The Customer must provide the Company with up to date contact details of one or two named representatives with whom the Company will be authorised to deal (including email addresses) and promptly notify the Company of any changes.

7 Charges

- 7.1 The Customer shall pay to the Company the Fees relating to the Service on the basis specified in the Order Form.
- 7.2 The Company may, at any time after the Initial Period, alter the amount of the Fees or of any of its charges and, if it does so, the Company shall notify the Customer in writing of such alteration and such change shall take effect from the date specified in such notification which shall not be less than 30 days after the date of such notice.
- 7.3 Except as otherwise stated in the Agreement, the Fees are non-refundable. For the avoidance of any doubt, Fees paid in advance are also non-refundable if the Customer terminates the Service before they have been fully used.
- 7.4 Fees are exclusive of value added tax that, unless otherwise stated, shall be paid by the Customer to the Company in addition.
- 7.5 Unless otherwise stated, Fees do not include charges for any communications service contracted by the Customer with a third party used to connect the Customer to the Service.
- 7.6 Additional charges may be made at the Company's current standard consultancy rates of £99 per hour for advanced support, custom programming or configuration, or software installation.
- 7.7 Without prejudice to its other rights and remedies, the Company shall be entitled to interest on any amounts due from the Customer under this Agreement which are unpaid by the due date for payment at the rate of 5 percent above Barclays Bank Plc base lending rate from time to time in force, subject to a minimum of 12% per annum, being calculated on a day-to-day basis on the amount of any sums due but not paid as well after as before judgement.
- 7.8 Any administration charges incurred as a result of cheques and direct debits being returned unpaid by the Customer's bank or credit card payments being returned shall be paid by the Customer.
- 7.9 In no event shall the Company incur liability for any Service Interruption unless:-
- 7.9.1 a written claim is made within 5 working days of the Service Interruption giving rise to such credit; and,
- 7.9.2 the Customer has a right to claim a Service Interruption credit pursuant to the Service Level Agreement and has in all material respects complied with the procedure for making such a claim. In any event, such Service Interruption credit shall not exceed the corresponding equivalent monthly Subscription Fee for the period of the Interruption, and shall only be due from the period starting from the date upon which the Customer notified the Company of the problem.
- 7.10 The Company reserves the right, at any time, to require the Customer to issue a deposit or other form of security acceptable to the Company if:-
- 7.10.1 the Customer's financial circumstances or payment history is or becomes unacceptable to the Company; or,
- 7.10.2 there is a material change in the Customer's circumstances or the Customer's actual or anticipated usage. Upon receipt of a written request for security the Customer shall have five working days to provide such security. If the Customer fails to comply with such request within said period, the Company shall (at its sole discretion) be entitled to immediately suspend the delivery of Service and/or terminate this Agreement without further notice.

- 7.11 The Company reserves the right to upgrade the Customer to a level of service or associated cover if, in the opinion of the Company:-
- 7.11.1 the Service becomes inappropriate or insufficient to meet the Customer's requirements; or,
 - 7.11.2 the Customer's usage pattern demonstrates a requirement for a different service. Provided that the Company has first consulted with the Customer in connection with the provision of such different level of service, the Customer will be liable for the higher charges and costs associated with the upgraded service.

8 Cancellation

- 8.1 If after the Customer's order for the Service has been accepted by the Company, but before the Service is delivered and/or installed, the Customer wishes to cancel the order, the Customer must give written notice of such wish to the Company within seven days of the date of such order and the Customer will be liable to pay as a one-off payment the amounts detailed in this clause 8 ("the Administration Fee") to reimburse the Company for any cancellation charges already incurred by the Company in relation to the provision of the Services.
- 8.2 The Administration Fee will only become due after the Company has made all reasonable endeavours to cancel any order made by the Company to a third party in consequence of the Customer's order for the Service without incurring cancellation charges. If, notwithstanding the Company's reasonable endeavours, the Company is charged a cancellation charge, the Company shall notify the Customer and the Administration Fee shall, from the date of such notice, become due from the Customer to the Company.
- 8.3 Subject to clause 8.2, the Administration Fee will be determined by reference to the amount of prior written notice of cancellation given to the Company by the Customer as follows:
- 8.3.1 up to (and including) 30 Working Days prior to the CDD: 30% of the total net value of the order;
 - 8.3.2 up to (and including) 10 Working Days prior to the CDD: 80% of the total net value of the order;
 - 8.3.3 less than 10 Working Days prior to the CDD: 100% of the total net value of the Order.
- 8.4 The Administration Fee is exclusive of value added tax that, unless otherwise stated, shall be paid by the Customer in addition.

9 Confidentiality

- 9.1 Subject to clause 9.2, each party shall keep confidential any Restricted Information during the term of this Agreement and thereafter and shall not, without the written permission of the other party, disclose any Restricted Information to any third party.
- 9.2 Nothing in this clause 9 shall be deemed to construe or prevent either party from disclosing:-
- 9.2.1 any Restricted Information to any parent company, consultant, subcontractor or other person engaged in connection with the provision of the Service provided that the disclosing party shall take reasonable steps to ensure that such information is held in confidence by such persons;
 - 9.2.2 any Restricted Information which is or becomes public knowledge other than by a breach of this clause 9; or,
 - 9.2.3 any Restricted Information which is required to be disclosed in discharge of any obligation to supply the information for governmental or judicial purposes.
- 9.3 The Customer acknowledges that any Restricted Information obtained by the Customer in the course of negotiating or in the performance of this Agreement is the exclusive property of the Company.

10 Termination and suspension

10.1 If the Customer:-

- 10.1.1 fails to pay any Fees or related charges;
 - 10.1.2 ceases to carry on business or becomes insolvent, or has an administrator or receiver appointed or enters into liquidation or enters into any agreement with its creditors;
 - 10.1.3 fails to fulfil any of its obligations under any part of this or any other agreement that it has with the Company, including (without limitation) if the Customer breaches the AUP; or
 - 10.1.4 interferes with or impairs the Service or the Company's ability to perform the Services, then the Company may, without prejudice to any other right or remedy available to it:
 - 10.1.4.1 immediately suspend provision of the Service until the Customer has remedied such matter (which the Customer shall be obliged to do within 30 days of the Company notifying the Customer of the matter to be remedied) and the Customer shall continue to be liable for any of the charges and Fees which may accrue during such suspension; and/or
 - 10.1.4.2 if the matter is remediable, terminate the Agreement after giving at least 30 days written notice in which case any unused portion of the Fee will not be returned; and/or
 - 10.1.4.3 if the matter is irremediable, terminate the Agreement forthwith in which case any unused portion of the Fee will not be returned; and/or
 - 10.1.4.4 immediately terminate the access to the whole or part of the Service at any time including (without limitation) for breach of the AUP; and/or
 - 10.1.4.5 withhold access to any Customer and/or the Equipment.
- 10.2 Without prejudice to clause 10.1, either party may terminate the Service by written notice subject to giving the Minimum Written Notice Period. Such notice may be given at any time, but it may only take effect on or after the expiry of the Initial Period referred to in clause 4.1.
- 10.3 Without prejudice to the provisions of clause 10.2,:-
- 10.3.1 where the Service includes one or more leased lines or a similar level of broadband circuit, the Minimum Written Notice Period is not less than one calendar months' written notice, subject to an initial contract period of twelve months; and
 - 10.3.2 in relation to all other services, the Minimum Written Notice Period is not less than one calendar months' written notice. For the avoidance of doubt, the Customer hereby acknowledges that the appropriate Written Notice Period forms part of the term of the Agreement and that the Customer will be charged during it in accordance with these terms and conditions.
- 10.4 Upon termination or expiry of this Agreement, the Customer shall remain liable for all outstanding obligations and Fees and shall be responsible for the safe return of any and all the Equipment in the Customer's possession in accordance with the provisions of clause 6.6. It is acknowledged by both parties that this clause shall survive the termination of the Agreement.
- 10.5 For the avoidance of doubt, any licences granted by the Company under this Agreement shall terminate upon the termination of this Agreement.

11 Limitation of liability

- 11.1 Nothing in this Agreement shall exclude or restrict either party's liability for death or personal injury resulting from its proven negligence.
- 11.2 Subject to clause 11.1, the Customer acknowledges that the Company has no control over the information transmitted to or from the Service and that, notwithstanding the rights reserved to it under the Agreement, the Company does not normally examine the use to which customers put the Service or the nature of the information they are sending or receiving. The Company hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.
- 11.3 The Company shall not in any circumstances be liable under this Agreement or otherwise for any direct or indirect loss, loss of business, revenue, profits or savings; wasted expenditure; corruption or destruction of data; or for any indirect or consequential loss whatever whether arising from negligence, breach of contract or otherwise.
- 11.4 In any event, subject to clause 11.1, the Company's liability in contract, tort or otherwise (including negligence) howsoever arising out of or in connection with this Agreement shall in respect of any one or more incidents not exceed the total Fees received by the Company in the calendar year in which the incident occurs.
- 11.5 The Customer shall indemnify and keep indemnified the Company from and against any claims, action, costs (including legal fees) and expenses arising from the Customer's use of the Service that are brought or threatened against the Company by a third party.
- 11.6 The provisions of this clause 11 shall continue to apply notwithstanding the termination or expiry of this Agreement.

12 Service of notice

- 12.1 Any written document shall be deemed to be given or served by the Company on the day following that on which it is dispatched by electronic mail to the Customer's Internet electronic mail account, or posted to, or left at, the address given by the Customer for receiving bills.
- 12.2 Any information published on the Service, including changes to Fees or charges, shall be deemed to be given or served by the Company on the day that it is published and such change shall take effect thirty days after such notice is given.

13 Force Majeure

Neither the Company nor the Customer shall be liable for any breach of this Agreement caused or substantially contributed to by Force Majeure.

14 Law and jurisdiction

- 14.1 These terms and conditions are subject to the laws of England and Wales and both parties hereby submits to the jurisdiction of the English Courts.
- 14.2 The Order Form, these terms and conditions, the AUP, the SLA and the Service Description contain the entire Agreement between the parties with respect to the Service, and supersede all previous agreements and understandings between the parties, and may not, except as provided in the Agreement, be modified.
- 14.3 The Customer acknowledges that, in entering into this Agreement, it does not rely on any representation by the Company or the Company's employees, agents or any published material, warranty or other provision, except as expressly provided in this Agreement and, accordingly, all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law provided that this clause shall not operate so as to exclude or limit the liability of any party for fraudulent misrepresentation.
- 14.4 Each party shall observe the requirements of the Data Protection Acts 1984 and 1998 regarding any personal data that comes into its possession relating to the other party or its employees, customers and agents and each party shall indemnify and keep indemnified the other from and against any claims relating to the Data Protection Acts which result from the negligence of the other party.

- 14.5 The Customer hereby consents to the Company using the information provided about itself, its employees and agents for the purpose of fulfilling the Customer's order and the Company represents and warrants that in giving such consent it has the express authority of the relevant data subjects. The Customer agrees that, unless it has opted out by writing to the Company, the Company may from time to time notify the Customer of products and offers that the Company considers may be of interest to the Customer. The Customer can correct any information about it or ask for information about it to be deleted, by giving written notice to the Company. The Customer hereby agrees that the Company may refer to the Customer, by company or trading name, and to the existence of this Agreement in any marketing or promotional materials.
- 14.6 Each of the provisions contained in this Agreement and in each clause and sub-clause thereof shall be construed as independent of every other provision of this Agreement and in the event that any part of this Agreement is held by any court of competent jurisdiction to be invalid, unenforceable or unreasonable, the remainder of the Agreement shall remain in full force and effect.

15 Changes to terms and conditions

- 15.1 Whenever the Company is required to do so, including (without limitation) as a result of a change in the law, the enactment of any statute, a change to the rules applied by Internet authorities and collaborative Internet bodies or the introduction of new rules, procedures or policies by relevant third parties, the Company may by notifying the Customer in writing (whenever possible giving 30 days notice), modify the Agreement.
- 15.2 The Company may, at any time, modify the Agreement by notifying the Customer in accordance with clause 12.
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