

Kinetic Internet Limited

Company No: 4470080

Customer Terms & Conditions Agreement

Between:

Kinetic Internet Limited
Lodge Park, Lodge Lane
Langham
Colchester
Essex
CO4 5NE

Hereafter referred to as "Kinetic Internet "of the one part;

and

The Customer / Client / End user of KINETIC INTERNET services

Hereafter referred to as "Customer" of the other part.

1. Definitions herein

Unless context otherwise dictates, words in the singular include the plural and vice versa and words in one gender include any other opposite gender or otherwise redefined in attached addendums;

1.1 The Act

The Telecommunications Act of 1984 and any statutory amendment or modification thereof.

1.2 Services

The telecommunication and Internet services and or other provided by KINETIC INTERNET, as displayed in the latest KINETIC INTERNET literature, web site and or attached addendums.

1.3 Company

KINETIC INTERNET Limited

1.4 Intellectual Property

Any patent, copyright, registered design, trade mark or other industrial or intellectual property right subsisting in the Territory in respect of the service and applications for any of the foregoing;

1.5 End User

Deemed herein as the KINETIC INTERNET client supplied directly by KINETIC INTERNET, alternatively defined an End User.

1.6 Customer

Deemed herein as the KINETIC INTERNET client supplied directly by KINETIC INTERNET, alternatively defined a Customer.

2. Services

KINETIC INTERNET determines the telecommunication products and services offered at any time to the Customer, at their sole discretion.

- (i) Except as provided in the related addendums these General Conditions apply to each and any provision of Services to the customer to the exclusion of all other conditions, agreements, understandings or arrangements not set out in the applicable Addendum.
- (ii) Services are provided on the terms contained within the associated addendums. When you enter into a service addendum agreement with KINETIC INTERNET in relation to the provision of that Service the terms of that Separate Contract shall take priority over these Conditions.
- (iii) KINETIC INTERNET reserve the right to subcontract its obligations and/or duties set out in this Agreement.
- (iv) The customer may not refer to KINETIC INTERNET in its sales or marketing activity or literature except with the prior written consent of KINETIC INTERNET and or attached to this agreement as an addendum, such permission may be withheld and reserve the right to give a reason;
- (v) KINETIC INTERNET may need to change or alter the configuration of the Service or Service Equipment provided under this Agreement in order to provide the Service to Customer. KINETIC INTERNET shall use reasonable efforts to give at least 14 days prior written notice to customer of any such change or alteration where possible.

3. Customer Charges

You must pay for any set-up charges for services supplied by KINETIC INTERNET in relation to the services requested and supplied herein and or are set out in the price list located at www.kinetic-internet.co.uk, or in turn serviced to you by email or post. These rates are part of this contract. After any initial payments have been made, thereafter, all payments are made strictly by the agreed method, facilitated and made available within your control panel or otherwise set out in an addendum herein, thereafter, on a monthly basis unless agreed in writing by a Director of KINETIC INTERNET to the contrary;

3.1 At any time during the term of this Agreement, KINETIC INTERNET may, upon giving the customer 30 day's prior notice in writing or by electronic or such expeditious means as KINETIC INTERNET may from time to time decide, vary its Charges.

3.2 Charges for a Service shall accrue from the date above or the date on which the Customer commenced use of the Service.

3.3 payments will be due within 14 days, after which, the amount will be deemed overdue and KINETIC INTERNET will be in a position to implement clause 3.4 herein

3.4 Interest shall be payable on all overdue invoices from the due date until actual payment in line with clause 3.10 contained herein.

3.5 All charges are, unless agreed otherwise, exclusive of value added tax and any other applicable sales tax or duty which shall be payable by Reseller at the prevailing rate.

3.6 KINETIC INTERNET reserves the right to carry out a credit check prior or after the customer's acceptance of this agreement and request copies of two utility bills from the declared business address. Subsequent to any credit check KINETIC INTERNET reserves the right to request a deposit or 3rd party guarantee, to be specified at that time, from the Customer as a condition of providing or continuing Service. Any deposit shall be held by KINETIC INTERNET for a period of twelve (12) months (or until the Agreement is otherwise terminated) when it shall be returned in full or credited against an invoice at KINETIC INTERNET's sole discretion. Any deposit does not relieve the customer of the responsibility for the prompt payment of invoices in accordance with relevant Clauses contained herein.

3.7 KINETIC INTERNET reserve the right if undue excess activity on the customer's account is observed and or the customers capability to pay within the due period, to reduce the payment of invoices to weekly or a security deposit taken

to the amount deemed necessary to cover, for a period of no more than 6 months or less if predetermined by KINETIC INTERNET in writing.

3.8 Payment Methods available are defined on the customers invoices, KINETIC INTERNET reserve the right to dictate the method of payment when it deems necessary.

3.9 If the customer pays any Charges due to us: (i) by cheque or direct debit and the Customer's approved financial institution refuses to make payment; or (ii) in a currency other than pounds sterling; we will charge the Customer for any bank charges, approved financial institution fees and/or extra administration costs (which may include third party charges) that we incur as a result

3.10 If the Customer does not meet the due payment by due date, KINETIC INTERNET reserve the right to: (i) suspend or terminate the customer access to the Services relevant Control Panel; and/or (ii) charge the Reseller interest on the overdue amount(s) at the rate of 3% per annum above Santander plc base rate. Interest is calculated and accrues daily: and/or (iii) charge an administration fee to cover late payment costs.

3.11 If Customer disputes any invoice, the Reseller must notify us in writing of the dispute and providing us with sufficient detail to investigate the matter and determine whether the Customer's dispute is genuine and reasonable, prior to the due date for the invoice (ref clause 3.3). If we determine (at our sole discretion): (a) that the Customer's dispute is not genuine or reasonable, the Customer must pay the invoice in full, plus any interest charged on the full invoiced sum in accordance with clause 6.10 above; or (b) that the customers dispute is genuine and reasonable, the Customer must pay the undisputed part of the invoice and we will both use all reasonable endeavours to resolve the dispute as quickly as possible. If any such dispute is resolved: (i) such that the Customer still owes KINETIC INTERNET amount due, the Customer must pay all sums owed to us within 7 calendar days of resolution of the dispute, KINETIC INTERNET reserve the right to charge interest in accordance with clause 3.10 above from the date payment of the disputed invoice was due; or (ii) such that we owe the Customer money, we will (at our sole discretion) repay or credit on the next invoice sent to the Customer following resolution of the dispute any amount overpaid by the Customer. Each Party will be responsible for their own costs.

3.12 KINETIC INTERNET reserves the right to increase the Fees for Services in respect of which it has entered into a Contract with you upon 14 days prior written notice to you.

3.13 KINETIC INTERNET reserves the right to contact you by email as its primary form of communication in relation to charges, changes to your service or account. It is the customer's responsibility to ensure their supplied email address is working, kept up to date and read.

4. Trade Marks

Nothing in this Agreement shall be construed to grant to you any license or any other proprietary or contractual right or interest in KINETIC INTERNET. KINETIC INTERNET shall retain all right, title and interest (including copyright and other proprietary and intellectual property rights) within the customer website and or advertising literature, including all legally protected elements and derivative works thereto.

4.1. Unless otherwise specified in writing by KINETIC INTERNET, we are the owner or licensee of all intellectual property rights within the KINETIC INTERNET Website and control panels along with all subsidiaries and associated companies to KINETIC INTERNET Computer Services Limited, and in the material published within it. Those works are protected by copyright laws and treaties around the world. All such rights are reserved.

4.2. Unless otherwise specified, the authors of the literary and artistic works in the materials contained in the web sites/panels determined in clause 4.1 have asserted their moral right pursuant to Section 77 of the Copyright Designs and Patents Act 1988 to be identified as the author of those works.

5. Waiver

If at any time we do not require the Customer to comply with any provision of this Agreement, this will not prevent us from doing so in relation to that or any other provision of this Agreement in the future.

6. Customer Representations

You hereby represent and warrant to KINETIC INTERNET that:-

- (i) If an individual, you are at least 18 years of age
- (ii) You have full power and authority to execute and deliver this Agreement and Addendums and to perform its obligations hereunder
- (iii) This Agreement constitutes your legal, valid and binding obligations; and
- (iv) All information that you have provided, and may from time to time provide, to KINETIC INTERNET are, unless you deliver written notice to KINETIC INTERNET to the contrary, shall continue to be, true and complete. Any falsifying of information within this agreement will be your sole responsibility under law.

7. Indemnification

You hereby agree to defend, indemnify and hold KINETIC INTERNET harmless from and against any suit or proceedings brought against KINETIC INTERNET that arises from any illegal activity by you, breach or any associated person of your obligations, representations or covenants contained within this Agreement.

8. Faults

KINETIC INTERNET will make every effort to provide you with the best possible service; we cannot guarantee that the service will never be at fault. KINETIC INTERNET will make every effort to correct all reported faults as soon as we reasonably can, affording any notice period where possible and complying with the clauses contained herein.

9. Security

We will issue you with a username and password for accessing KINETIC INTERNET's Customers Control Panel, hereafter known and referred as "Control Panel" in this agreement and attached addendums. These are essential for your secure use of the control panel and service, so you must ensure that they are kept confidential, secure and are used in accordance with all relevant instructions. To ensure that the service remains secure, you must not change or attempt to change a username. If we think there is likely to be a breach of security or misuse of the service we may change your password and then we will notify you that we have done this; and/or suspend username and password access to the Control Panel Interface. If you think that any username or password has become known by someone not authorized to use it, or if any password is being or is likely to be used in an unauthorized way, it is your responsibility to inform KINETIC INTERNET immediately. If any of the information you give to us when you commence with KINETIC INTERNET, including any changes to your payment details, you must inform us as soon as possible.

10. Authorisation and Authentication

10.1 KINETIC INTERNET when required will issue a username and password to the End User via e-mail if not already issued for another service. This login information will serve as identification of the Customer and all services attached to and within its control panel, when accessing KINETIC INTERNET services, either via its web site or through its programmatic interfaces.

10.2 The Customer is responsible for careful use and storage of the username and password issued by KINETIC INTERNET. The Customer acknowledges that KINETIC INTERNET recommends changing the password on a regular basis. If misuse or theft of the login information is suspected, the Customer agrees to immediately notify KINETIC INTERNET in order to suspend

the Customer's account and or take other appropriate measures with the account if required. KINETIC INTERNET shall not be held liable for losses or other consequences arising out of such misuse.

11. Operational contingencies

KINETIC INTERNET may need to temporarily suspend a service for operational reasons (e.g. for repairs, planned maintenance or upgrades), KINETIC INTERNET will give you as much notice as deemed possible but not obligated to do so. KINETIC INTERNET will make every attempt to restore the service as soon as possible after any suspension or outage. KINETIC INTERNET reserve the right to alter code or access numbers or technical specification associated with the service deemed necessary for operational reasons. The technical specification will only be changed where this will not materially affect the performance of the service.

12. Limitation of Liability

Under no circumstances shall KINETIC INTERNET be liable to you for any damages, including without limitation any damages for lost profits or business, loss of goodwill, interruption of business, or for any exemplary, punitive, special, indirect, incidental, consequential or special damages, regardless of whether such claim arises under any theory of tort, advice, contract, strict liability or otherwise and regardless of whether KINETIC INTERNET is advised of the possibility of any such damages.

13. No Assignment

You may not assign (by operation of law or otherwise) either this Agreement or any of its rights, interests, or obligations hereunder without the written consent of KINETIC INTERNET.

14. Addendums

Any addendums attached to this agreement in relation to updates, amendments and or extra services provided by KINETIC INTERNET are part of and obligated by the terms within this agreement.

15. Third Party Rights

A person who is not a party to this Agreement has no right under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

16. Terms and Conditions

This agreement is in conjunction with the Terms and conditions available on the KINETIC INTERNET website respective to the services provided and it is the responsibility of the customer to read and accept the conditions described therein by signing this agreement, the signatories are confirming so.

17. Governing Law

This Agreement shall be governed by and construed under the laws of the England and Wales.

18. Notices

Any notice to be served by KINETIC INTERNET on the Customer shall be deemed to have been duly served if sent by e-mail or first class post to the Customer at his last known address. Any notice served by first class post shall be deemed to have been served three days after posting and any notice served by e-mail shall be deemed served 48 hours after sending. Any notice to be served on KINETIC INTERNET should be served by sending said notice by post to the Company's registered address. Any notice served shall only be deemed served once the Customer has received an acknowledgement from KINETIC INTERNET of receipt. Proof of acknowledgement of receipt of such notice by KINETIC INTERNET will only be deemed valid if produced in writing.

19. Enforceability

If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its own terms.

20. Force Majeure

Neither party shall be liable to the other for any default under this Agreement where such default was caused by any unforeseen event beyond the reasonable control of the defaulting party. Such events include, by way of example only: the result of any Act of God; war, insurrection or civil disorder; failure or shortage of power supplies; national or local emergency; acts or omissions of government; industrial disputes of any kind; the acts or omissions of other companies.

21. Termination

Either the Reseller or KINETIC INTERNET may terminate this Agreement at any time, by giving 28 days notice thereof (via electronic mail or other means) to the other party, and;

22.1 Without prejudice to any other rights KINETIC INTERNET may terminate the Agreement immediately and or suspend all or part of the services until further notice, if the Customer, at KINETIC INTERNET's sole discretion, damages KINETIC INTERNET's reputation or relationship with existing or potential future customers, or brings the company name into disrepute.

22.2 Without prejudice to any other rights the Customer may terminate the Agreement by giving the aforementioned notice period if KINETIC INTERNET are unable to supply the services associated with this agreement and its addendums and promoted through the KINETIC INTERNET website.

22.3 Without prejudice to any other rights KINETIC INTERNET may terminate the Agreement immediately after non payment of invoices and or no communication after a period of 28 days. KINETIC INTERNET reserves the right to block access to the customer's panel and take control of said panel. The Customer will be liable to all invoices incurred up to the agreed date of termination of this agreement.

22.4 KINETIC INTERNET becomes aware that Customer is using or is likely to use the Services in any way which may be interpreted as illegal, immoral or otherwise disreputable, or likely to expose KINETIC INTERNET to un-acceptable risks legally or otherwise, KINETIC INTERNET reserve the right to suspend or terminate with immediate effect with no prior notice.

22.5 Any termination shall not relieve the customer of its obligation to pay any charges incurred hereunder. The Parties' rights and obligations which by their nature would extend beyond the termination, or expiration of this Agreement shall survive such termination, or expiration For the avoidance of doubt, termination of a Service does not affect the provision of any other Service provided pursuant to this Agreement.

22. Dispute Resolution

KINETIC INTERNET will make every effort resolve any dispute quickly and satisfactorily. If the dispute outcome is not to the satisfaction of the Customer, the customer has right to seek arbitration for the dispute to be resolved with the Ombudsmen Otelo (<http://www.otelo.org.uk>). Details of our complaint and dispute resolution procedures are set out in our Code of Practice.

23. Entire Agreement

This Agreement together with its Schedule and attached addendums constitutes the entire Agreement between the parties on the subject matter hereof and shall supersede all prior written or verbal agreements and understandings between the parties. In the case of all services offered or supplied, where the additional or replacement terms are required in this agreement shall also be regarded as part of our agreement and where applicable to individual services, refer to the specialised attached addendum hereto.