



NewNet Terms and Conditions

Terms and Conditions of Business

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

“Accepted Order” means an Order which has been accepted by the Company, acceptance being indicated by an Order being signed by the Company and returned to the Customer;

“Agreement” means any agreement made subject to these Conditions that shall incorporate these Conditions;

“BT” means British Telecommunications plc;

A **“Call”** is defined as the connection of one or more parties via the networks or the PSTN by which the ability to transmit or receive digital data or other information is made possible. This applies to one and two way traffic and includes any recorded and/or automated transmissions and or the reception of data;

“Colocated Equipment” means any equipment sited at the Company’s or other third party’s premises as required to provide the Service;

“Colocation” is defined as the housing of equipment (customer provided or leased) within one of our Data Centres. Colocation is offered with a Standard Service Level Agreement unless otherwise specified within the appropriate Schedule.

“Company” means NEWNET Ltd (company registered number 3128506) of Carnac Lodge, Cams Hall Estate, Fareham, Hampshire PO16 8UJ;

“Company Equipment” means any equipment owned by the Company and used in connection with the provision of a service, or which is supplied by the Company for lease by the Customer under an Accepted Order;

“Customer” means any person or organisation with whom the Company enters into an Agreement subject to these Conditions;

“Customer Equipment” means any equipment owned by the Customer and used in connection with the provision of a Colocation or other service, or which is supplied by the Company for purchase by the Customer under an Accepted Order;

“Domain Name” means any name and appropriate classification and or geographic locator registered with an appropriate domain registry and converted to an Internet Address by means of a Domain Name Server;

“Internet Address” means such sequence of alpha numeric or numeric only characters as are used from time to time by the Customer to identify himself and or his computer or computers to other users of other computers to which the Company is from time to time connecting or otherwise forwarding data to and from the Customer;

“Internet” means the global data network comprising interconnected networks using TCP/IP to which the company is connected and provides access to its Customers;

“ISP” means an Internet Service Provider;

“Leased Equipment” means any equipment owned by the Company and leased to the Customer;

“Network Operator” means the legal entity or entities responsible for operation of a communications network;

“OLO” means a Network Operator other than BT (or Other Licensed Operator);

“Password” means the alphanumeric characters chosen and used exclusively by the Customer at his own risk for the purpose of securing and maintaining the exclusivity of his access to the Company's service;

“PDN” means the Public Data Network operated by a PTO as defined by the Telecommunications Act 1984;

“POLO” is the pence per minute “payment to OLO” rate payable by BT to the Company's telecommunication provider from time to time for the termination of a Call originated on the BT telecommunications system to a Customer as set out in BT's carrier price list from time to time;

“POWER” is invoiced in 1KW units where 1KW is defined as the average power consumed over a 1 month period when the average current reading is less than 4.35 Ampere at a nominal 230V supply.

“PSTN” means the Public Switched Telephone Network operated by a PTO as defined by the Telecommunications Act 1984;

“PTO” means a Public Telecommunications Operator as defined by the Telecommunications Act 1984;

“Retail Rates” mean the rates for retail telecommunications services provided by BT as set out in BT's retail price list from time to time;

“RIPE” means the Réseaux IP Européens - RIPE administer and provide technical co-ordination necessary to enable the operation of a pan-European IP network. RIPE manage the allocation of all IP's in Europe;

“Service Commencement Date” means the date identified as the delivery date on the company invoice to the Customer;

“Service” means the services described in the current Company literature together with such Value Added Services to be provided by the Company to the Customer but in any event include the provision of data network services using TCP/IP. Representations made by the Company's distributor will not form part of this agreement unless confirmed in writing prior to purchase of the service;

“TCP/IP” is the abbreviation for Transmission Control protocol/Internet Protocol;

“Transit Charges” means the charges payable to BT by the Company's telecommunications provider for the transit of Calls originated on an OLO's system and terminated on an OLO's system, as set out in BT's carrier price list from time to time;

“Upgrade Usage Charges” means such charge for such predetermined unit of time and or volume of data together with any charges related to Value Added Services from time to time provided by the Company in each case at the rates set out or referred to in the Company's published tariffs and or such as may be agreed in writing with between the Customer and the Company;

“User Name” means such sequence of alpha numeric characters as are used from time to time by the Customer to identify himself to other users of other computers to which the Company is from time to time *connecting* or otherwise forwarding data to and from the Customer;

“U” – one ‘U’ in relation to space within server racks refers to a vertical height of 44.45mm;

“Value Added Service” means the provision of a service other than simple connectivity that may be detailed in the current Company brochure.

1.2 In these Conditions and an Agreement, unless the context otherwise requires or is otherwise specified:

1.2.1 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

- 1.2.2 words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;
 - 1.2.3 any reference to a party includes a reference to its successors in title and permitted assigns;
 - 1.2.4 references to clauses and schedules are to be construed as references to the clauses of, and schedules to, these Conditions or the Agreement;
 - 1.2.5 the headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of these Conditions or the Agreement.
- 1.3 In the event of any conflict (whether as to interpretation or otherwise) between the provisions of an Accepted Order, the Agreement, these Conditions and the provisions of any other agreement or document referred to in this Agreement the following order of precedence shall apply:
- 1.3.1 the Accepted Order;
 - 1.3.2 the Agreement;
 - 1.3.3 these Conditions; and
 - 1.3.4 that other agreement or document.
- 1.4 A third party who is not a party to the Agreement has no right to enforce any term of it.

2. ACCEPTANCE OF ORDERS

The Company reserves the right to refuse any order for subscription, services or goods.

3. THE SERVICE

- 3.1 Subject to these Conditions the Company will, as required and subject to the Customer Order:
- 3.1.1 connect the Customer to the Company's network Internet points and service;
 - 3.1.2 register the Customer's Domain Name; and
 - 3.1.3 provide the web site hosting service.
- 3.2 Domain Name registration is subject to the availability of the requested Domain Name, and the Customer accepts that registration can take from 1 to 40 working days from the date of payment and receipt of full details.
- 3.3 Domain name renewals are the responsibility of the Domain Owner. The Domain Owner must not rely upon receiving notification from domain registrars, agents or resellers for domain renewals. It is the responsibility of the Domain Owner to ensure the renewal fee has been received by the registrar within the existing registration period.
- 3.4 The Customer acknowledges that the web sites hosting service will take up to 2 weeks from the date of payment until it is fully operational.
- 3.5 The Company shall procure the provision of connectivity to the Customer as soon as reasonably possible. Any date indicated by the Company as a date for connection is an estimate only and may be liable to change without prior notification to the Customer. Accordingly the Company will not be responsible for any delay in connection beyond such a date.

- 3.6 It shall be the responsibility of the Customer to ensure that the contact, billing and other email addresses, mail address, telephone and fax numbers held by the Company are correct and up to date. Customers must ensure that email and other addresses etc. are updated within 5 days of the change becoming effective. The Company will not be held liable for any failure to contact Customers via addresses held within records but not updated by Customers.

4. RIGHT TO CHANGE USERNAME, INTERNET ADDRESS AND PASSWORD

The Company shall have the right from time to time to change the Customers User Name, internal address and or password allocated by the Company for the purpose of essential network maintenance, enhancement, modernisation or other work deemed necessary to the operation of the Internet. Any such changes to be notified by email or fax.

5. PAYMENTS

- 5.1 Charges for the Service shall be paid by the Customer to the Company in advance annually or quarterly unless any other payment method has been agreed in writing between the Company and the Customer or as detailed on any Accepted Order.
- 5.2 The Company reserves the right to vary from time to time all charges with one months' notice to the Customer.
- 5.3 Any Upgrade Usage Charges detailed in any of the Company's published tariffs and that of its appointed distributor currently in operation shall be paid by the Customer to the Company in advance, covering the period to the next payment date for the original data supply rate and thereafter simultaneously with the original data supply rate payment.
- 5.4 If this agreement is upgraded to provide a higher level of service, then the service will continue at the higher rate for the remainder of the contract period.
- 5.5 Colocation bandwidth is monitored on a monthly basis. If usage exceeds agreed commitment then an additional invoice will be presented to the Customer for the difference between usage and commitment. The uncommitted bandwidth will be charged at a rate as may from time to time be amended and advertised by the Company on its web site.
- 5.6 Itemised details of excess usage and any other relevant charges may be made available to the Customer if ordered in advance and the Company reserves the right to make an additional charge for this service.
- 5.7 All payments shall be due to the Company net on presentation of invoice unless otherwise specified on the invoice at the Company's main office or at such other address as may from time to time be specified by the Company in writing. All usage charges shall be payable in full in respect of the month in which the notice to terminate the Agreement expires.
- 5.8 Interest payable on demand whether before or after judgement shall accrue from day to day on overdue amounts at the rate of 2% above base rate together with VAT if applicable.
- 5.9 Customers who make duplicate payments for services or who overpay invoices will be refunded the difference subject to an administration charge of £25 (+VAT) being deducted from the refund. If the refund amount is less than £25 (+VAT) then no refund will be made.

6. USAGE

- 6.1 The Customer hereby agrees to:

6.1.1 Accept and abide by the NewNet Acceptable Use Policy as published on the NewNet web site at: <http://www.newnet.co.uk/aup/> and as may from time to time be changed.

- 6.1.2 refrain from transferring any illegal material (including but not limited to material which may be deemed to be offensive, abusive, indecent, defamatory, obscene, menacing or in breach of copyright, privacy or other rights) to or from other users of the service or the PDN and the other privately owned and operated services to which the Company may from time to time provide access;
 - 6.1.3 refrain from sending menacing, offensive, abusive or annoying messages (commonly referred to as, but not exclusively, 'spam' or Unsolicited Commercial Email 'UCE'), whilst using the Service via the Company or any other ISP;
 - 6.1.4 not divulge their Password to any third party and use all reasonable endeavours to keep the same confidential and inaccessible to third parties;
 - 6.1.5 keep the Company informed of any change to the Customer's address as set out overleaf and other such information as may effect the payment of charges due;
 - 6.1.6 immediately cease to use and return any Internet Addresses allocated by the Company to the Customer on termination of this Agreement;
 - 6.1.7 not to announce by any means any and all Internet Addresses allocated to or by the Customer by the Company as part of an autonomous system unless the addresses originate from inside the Company's network and the customer has obtained permission from the Company to operate an autonomous system;
 - 6.1.8 not to use or permit the usage of the Service in an unlawful manner or in contradiction of published legislation and regulations governing the Internet; and
 - 6.1.9 include the above restrictions in all the Customer's on selling conditions using the Company's Service and not to resell a bandwidth greater than that purchased and contracted from the Company unless linked to the Internet through another provider in addition to the bandwidth provided by the Company (dual homed) when the restriction will apply at the aggregated data rate.
- 6.2 The Company reserves the right to restrict or block internet traffic to or from a Customer server in the event of a failure to abide by the published terms of the Acceptable Use Policy. This may include, but not exclusively, the transmission of unsolicited email.
- 6.3 The Company reserves the right to make an administrative charge as a result of abuse of the Acceptable Use Policy.
- 6.4 NewNet does not tolerate abusive behaviour from anyone and reserves the right to terminate, without further notice or refund, the services of any customer or user who demonstrates abusive, intolerant, violent, verbally abusive or threatening behaviour towards NewNet, its staff, contractors, customers or other users.

7. EQUIPMENT

- 7.1 Customer Equipment shall:
- 7.1.1 at all times be at the Customers risk;
 - 7.1.2 be insured by the Customer against all risks;
 - 7.1.3 be subject to the terms and conditions of the landlord or owner of the building in which the equipment is located; and
 - 7.1.4 be compliant with the 'Control of Noise at Work Regulations' and any equipment that exceeds the 'lower action value' may not be operated within the building.

- 7.2 Leased Equipment from the Company shall:
- 7.2.1 at all times remain the property of the Company;
 - 7.2.2 shall be covered by, and the Customer agrees to maintain at Customer's expense during the entire time this Agreement is in effect, comprehensive general liability insurance.
- 7.3 Customer Equipment which is supplied by the Company pursuant to a purchase order shall:
- 7.3.1 remain the property of the Company until full payment for the Customer Equipment in cleared funds has been received by the Company, at which time title to the relevant Customer Equipment shall pass to the Customer; and
 - 7.3.2 be supplied without any warranty, representation or condition, whether express or implied by common law or statute and all such warranties, representations and conditions are excluded to the fullest extent permitted by law, save that any manufacturers' or suppliers' warranties that are capable of assignment shall be assigned by the Company to the Customer.
- 7.4 All Customer Equipment which is not located on land owned or leased by the Customer or its agents shall be subject to a general and particular lien for the payment of fees or charges payable by the Customer to the Company under any Agreement, and the Company may sell any Customer Equipment and apply the proceeds of sale in or towards satisfaction of every lien and all proper charges and expenses related to each lien, accounting to the Customer for any surplus, if the lien is not satisfied with 14 days from the date when the Company first gave notice of its exercise of any lien.
- 7.5 Where Colocated Equipment or Customer Equipment is located on land owned or leased by the Customer or its agents, the Customer shall grant or shall procure the grant to the Company, its employees, agents or contractors of a licence to enter the land to execute any works for and in connection with the maintenance, adjustment, repair, alteration or removal of the Colocation Equipment or Customer Equipment, subject to the Customer's or its agent's reasonable terms and conditions governing security and access procedures to enter the land if such terms and conditions provide for emergency access to the Colocated Equipment or Customer Equipment outside of normal business hours.

8. TELECOMMUNICATION TARIFFS

The Customer warrants to the Company on the date of this Agreement, on an ongoing basis throughout this Agreement, that it has independently verified the Retail Rates, POLOs, Transit Charges and any other applicable charges by reference to BT's retail and carrier price list from time to time.

9. LIABILITY

- 9.1 The Company shall not be liable for the following to the extent permitted by the applicable law:
- 9.1.1 indirect damages, loss of profits, business revenue, goodwill or any economic loss;
 - 9.1.2 any claim made against the Customer by another third party that does not follow a breach of these Conditions by the Company;
 - 9.1.3 any loss or damage to the Customer caused by or arising from any act or omission of the Customer, any PTO or Value Added Service supplier; or other customer or persons; or
 - 9.1.4 any act caused as a result of force majeure or beyond the Company's control.
- 9.2 The Company's total liability for any loss or damage suffered by the Customer shall not exceed the greater of £2,500 or the aggregate of all charges payable or paid by the Customer for the Service supplied in the 12 month period beginning on the Service Commencement Date or its anniversary in which the event giving rise to the claim occurs.

- 9.3 Neither party excludes or limits its liability to the other for death or personal injury resulting from the proven negligence of either party, its employees or agents.

10. CHANGES TO THE SERVICE

- 10.1 If any Network Operator shall discontinue the provision of telecommunications services to the Company or shall alter by modification, expansion, improvement, maintenance or repair the telecommunications services or any part thereof provided to the Company or shall disconnect the Customer's apparatus from the PSTN, PDN or Internet, the Company shall be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise change the Services as necessary.
- 10.2 If a Customer's equipment produces excessive heat, generates disruptive or excessive internet traffic or any other kind of disturbance or nuisance which affects equipment operated by other customers or the Company, the Company reserves the right, on giving three months written notice to the Customer, to relocate a customer's rack and/or equipment.

11. SUSPENSION

The Service may be suspended or suspended during peak times by the Company without notice and without prejudice to the company's rights of termination under clause 12 in the event of the following:

- 11.1 Failure by the Customer to make any payment to be made to the Company on its due date for payment.
- 11.2 If the Customer does or suffers anything to be done which jeopardises the Service or any network to which the Customer is from time to time connected.
- 11.3 If the Customer's credit limit has been exceeded or if the Customer is otherwise in breach of these Conditions.
- 11.4 No such suspension shall affect the liability of the Customer to pay charges and other amounts to the Company, and without limitation, the annual subscription charge will continue to accrue. During suspension the Company reserves the right to refuse to release the Customer's Internet Address as issued by the Company.

12. TERMINATION

This Agreement shall remain in force for a minimum period of 12 months, or unless as shown otherwise on the service schedule (attached), from the date of an Accepted Order. Termination can be effected as follows:

12.1 By the Customer

- 12.1.1 The Customer may terminate this Agreement by giving 3 months' written notice, which may expire at any time after 12 months, or other time as shown on the service schedule, from the Service Commencement Date. Email notification will not be accepted as notice of termination of Agreement.
- 12.1.2 Some services, for example ADSL broadband, have alternative minimum periods and are subject to alternative terms which are shown to the Customer during the ordering process.

12.2 By the Company

The Company may terminate this Agreement:

- 12.2.1 at any time and without notice if the Customer commits any breach of this Agreement including, but without limitation, non-payment of any subscription charges; or

- 12.2.2 by at least 3 months written notice to the Customer; or
- 12.2.3 with immediate effect if bankruptcy or insolvency proceedings are brought against the Customer, or an arrangement with creditors is made, or a receiver or administrator is appointed over any of the Customer's assets, or the Customer goes into liquidation.
- 12.3 The Company reserves the right to invalidate any Customer's User Name and Internet Address issued to the Customer following termination of this Agreement.
- 12.4 Domain name hosting and transfer request for DNS records must be in writing with the authorised signature of the domain owner. There is no charge for the transfer, but a small charge may be made for administration.
- 12.5 Domain Name transfers will not be made until all outstanding amounts have been paid by the Customer.
- 12.6 Domain Names shall remain the property of the Company until all outstanding amounts have been paid by the Customer except in such situations where the Domain Name has been previously registered and paid for in full by the Customer or third party.
- 12.7 No refund of subscription charges will be made to the Customer upon termination of the Agreement by either the Company or the Customer unless termination is in accordance with Clause 12.2.2 when a pro-rata refund minus costs may apply.
- 12.8 The Customer shall at his own cost return to the Company all equipment cables and literature belonging to the Company within 5 days of final completion of the agreement and ensure that it arrives in good working order.
- 12.9 The Company has the right to terminate the Contract immediately if the Customer any of its employees or agents engages in any conduct that is prejudicial to the Company or in the event of non-payment of the Fees by the Customer within thirty (30) days of the due date for payment.
- 12.10 Upon receipt by the Company of Notice of Termination, all invoices, including the termination invoice, will become due for immediate payment.
- 12.11 Upon termination, the provision of the Services shall immediately cease and the Customer shall:
- 12.11.1 pay all outstanding Fees and charges due under the Contract, including (but not exclusively) contract termination costs and excess bandwidth charges
- 12.11.2 at it's own cost, remove all its equipment from the premises without delay (providing all outstanding fees due under this contract are paid);
- 12.11.3 return to the Company any materials and Restricted information belonging to the Company.
- 12.12 The Company reserves the right to impose a charge equal to the full cost of Broadband service activation or Broadband migration should the Customer terminate service within 12 months of service delivery.
- 12.13 The Company does not tolerate abusive behaviour from anyone and reserves the right to terminate, without further notice or refund, the services of any customer who demonstrates abusive, intolerant, violent or verbally abusive behaviour towards NewNet staff, contractors or other customers.

13. RIGHTS ON TERMINATION

- 13.1 Termination of the Agreement shall not affect any pre-existing liability of the Customer or affect any right of the Company to recover damages or pursue any other remedy in respect of any breach by the Customer of the Agreement.

13.2 On termination of the Agreement the right to the use of the Internet Address allocated by the Company shall revert to the Company under RIPE terms or agreement except where a specific agreement has been reached in writing between the RIPE and the Customer for the transfer of the Internet Address and the fee or other payment required by the Company in connection with such transfer has been paid for by the Customer.

13.3 In the event of termination of the Agreement by the Company on account of any breach of these Conditions by the Customer, the Company shall be entitled to the balance of all annual subscription payments and call charges which would, but for such termination, have accrued up to the earliest date on which the Agreement could have been terminated by the Customer in accordance with these Conditions.

14. USER NAME AND INTERNET ADDRESS

The Company shall not be requested or required to release the User Name, Domain Name or Internet Address and may refuse to do so until this Agreement has been lawfully brought to an end and all sums due hereunder have been received by the Company, and the Customer has complied with all its obligations hereunder. Domain Names, when registered by the Company at the request of the Customer, remain the property of the Company until all sums due have been received.

15. NOTICES

15.1 Any notices under or in connection with this Agreement shall be in writing and shall be delivered by Royal Mail post to the relevant address given in the Agreement or to such address as the recipient may have notified to the other party via e-mail for that purpose.

15.2 Suspension notices for non-payment of charges will be deemed as delivered by facsimile to the relevant facsimile number given in the application or to such facsimile number as the Customer may have notified.

15.3 Any notice shall be duly given, if given by pre-paid first class mail, at the expiration of 48 hours after the envelope containing the same shall have been posted. In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such communication was properly addressed and posted as a pre-paid first class letter.

16. EXPENSES OF THE COMPANY

The Customer shall pay to the Company all costs and expenses (so that any legal fees shall be based on an indemnity basis) incurred by the Company in enforcing any of these Conditions, or exercising any of its other rights and remedies under the Agreement, including (without prejudice to the generality) all costs incurred in tracing the Customer in the event that legal processes cannot be enforced at the address last notified to the Company.

17. NON-WAIVER

The allowance of time to pay or any other indulgence by the Company in respect of payments due to it shall in no manner affect or prejudice its right to payment together with interest provided under these Conditions.

18. INVALIDITY

If these Conditions or the Agreement or any part thereof shall be adjudged for any reason to be void, unenforceable or ineffective but would be adjudged to be valid effective and enforceable if part of the wording were deleted or a provision were reduced in scope these Conditions of the Agreement shall continue with such modifications as may be necessary to make its provisions (or if such be the case its remaining provisions) valid effective and enforceable.

19. CONFIDENTIALITY

Each party hereto undertakes to the other that it shall keep, and shall procure that its directors and employees shall keep secret and confidential and shall not use or disclose to any other person any information or material of a technical or business nature relating in any manner to the business, products or services of the other party which the first party may receive or obtain in connection with or incidental to performance of the Agreement, provided that:

- 19.1 the first party shall not be prevented from using any general knowledge, experience and skills not treated by the other party as confidential or which do not properly belong to the other party and which the first party may have acquired or developed at any time during the Agreement;
- 19.2 the first party shall not be prevented from using the information or material referred to above to the extent such information or material comes into the public domain otherwise than through the default or negligence of the second party; and
- 19.3 notwithstanding the above, either party shall have the right to communicate any information concerning the other party to any Government department or body or other authority established by statute or under subordinate legislation, where such information is required by law or is otherwise properly required under a PTO licence, Office of Telecommunications regulation, or Code of Practice or otherwise.

20. ASSIGNMENT

Neither party shall assign or transfer any of its rights or obligations under an Agreement save that the Company may assign to an associated company within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, on notice.

21. MISCELLANEOUS

- 21.1 The Company and the Customer acknowledge and agree that this Contract shall not establish or constitute any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party will have the power to bind the other without the other's prior written consent.
- 21.2 Any typographical, clerical or other error in any sales literature, marketing materials, quotation, price list or other document issued by the company or contained on any page of the company website shall be subject to correction without any liability on the part of the company. For the avoidance of doubt, the company brochure and other sales literature or marketing materials (either appearing on the company website or in printed form) are not incorporated into and do not form part of this contract.
- 21.3 The customer agrees that the company may refer to the customer (with relevant description of the customer's business) in any of the company's marketing materials or on the company website. The customer hereby grants the company a limited licence to use any customer trade names and trademarks solely in connection with such marketing.
- 21.4 Except as expressly provided, the parties do not intend any term of this Contract to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 21.5 The failure or delay of the Company to enforce any part of the Contract shall not affect or waive the Company's rights to enforce it at a later date.

22. OTHER PRINTED OR STANDARD CONDITIONS

- 22.1 All Services are provided on the foregoing conditions which, together with any special terms set out on an Order or in the Agreement, constitute the entire agreement to the exclusion of any other terms and conditions and no agreement terms and conditions contained in any document sent by the Customer to the Company shall be of any effect with respect to the Agreement unless expressly accepted by a duly authorised officer of the Company in writing.

22.2 The Customer acknowledges that the Customer has not relied on and shall not be entitled to rescind the Agreement or to claim damages or any other remedy on the basis of any representation, warranty, undertaking or statement which is not set out in these Conditions, the Agreement or an Accepted Order, including any representation made by or on behalf of the Company in relation to the Service which has induced the Customer to enter into the Agreement with the Company.

23. VARIATION

The Company reserves the right to vary these Conditions as a result of changes required by its insurers, new legislation, statutory instruments, Government regulations or licences. These Conditions may not otherwise be varied or waived except by express written agreement between both parties.

24. SERVICE LEVEL GUARANTEE

24.1.1 Basic Service Level Guarantee

The Company warrants that its supply of access to the Internet shall be available at a level not less than 99% per month - the "**Basic Service Level Guarantee**". This warranty level shall apply to all customers with the exception of those subscribing to the "**Standard or Platinum Service Level Guarantees**" as below.

This warranty **excludes**:

24.1.1.1 failures of network/equipment/circuits not operated by the Company

24.1.1.2 failures of circuits external to the Company's premises

24.1.2 Standard Service Level Guarantee

The Company warrants that its supply of access to the Internet shall be available at a level not less than 99.7% per month - the "Standard Service Level Guarantee" where such guarantee level is purchased by the Customer.

This warranty excludes:

24.1.2.1 failures of network/equipment/circuits not operated by the Company

24.1.2.2 failures of circuits external to the Company's premises

24.1.3 Platinum Service Level Guarantee

The Company warrants that its supply of access to the internet shall be available at a level of 100% - the **Platinum Service Level Guarantee** where such guarantee level is purchased by the Customer.

This warranty **includes**:

24.1.3.1 failure of all networks/equipment/circuits

24.1.3.2 application of up to 20 firewall rules to customer server or leased line

24.2 Hardware and Software Monitoring – where provided only as part of an additional Service Level Agreement:

24.2.1 Equipment not owned by the Company is not directly monitored

- 24.2.2 Indirect monitoring is provided in the form of a standard Ping Test performed every 6 minutes to one IP address per Customer service account. By mutual agreement with the Company, the Customer will provide a nominated IP address for testing purposes.
- 24.3 Notification of Outage and Service Interruption Events – as part of an additional Service Level Agreement:
- 24.3.1 An outage or service interruption event is defined when the second ping test fails or when the Customer notifies the Company, which will be carried out in the first instance by use of the online form and then as per the escalation procedure put in place by mutual agreement.
- 24.3.2 The Company shall notify the Customer via the service status page of an outage or service interruption event within 30 minutes of such an outage being officially recorded
- 24.4 In the event of suspension of Service due to a technical fault in the network or act of God, the Company will use all possible endeavour to resume service with minimum delay but will not be responsible for loss suffered by the Customer.
- 24.5 The Company may suspend the Service from time to time for necessary technical reasons and network upgrades without invalidating its Service Level Guarantee set out above provided that 12 hours' notice via the Company's network status page or email has been given to the Customer and the period of suspension is not more than one hour. The Company shall use its reasonable endeavours to time such suspensions between 0000 hours and 0600 hours local time.
- 24.6 If the event reported as per the escalation procedure is confirmed by the Company, then the Customer will receive service credit as calculated by the following formula:

The **Availability** of the service shall be calculated at the end of each month in accordance with the following formula:

$$A = (X - Y) / (X - \text{planned outages}) \times 100$$

Where:

- "A" - the **Availability** of the service (expressed as a percentage).
- "Y" - Minutes of **downtime** in 1 calendar month
- "X" - Total minutes in 1 calendar month based on 1 minute past midnight on the 1st to midnight on the last day of the month.

Calculation of Downtime

Downtime is calculated from the time of notification of a fault by either the Company or the Customer, and ends when the service is restored to full working order. These times will be logged and notified via e-mail.

Compensation Calculations

Basic Service Level Guarantee

In the event that availability falls below the guaranteed level of **99%** in any particular month, then NewNet shall credit the Customer using the following guide:

Availability %	Reimbursement rate (% of monthly charge)	Maximum outage period (hours)
Above 99%	0	7.44 hours
95 – 98.9	5	37.2
90.00 – 94.99	10	74.4
85.00 – 89.99	15	111.6
80.00 – 84.99	20	148.8
75 – 79.99	25	186
<i>Below 74.99</i>	35	<i>Exceeds 186 hours</i>

Standard Service Level Guarantee

In the event that availability falls below the guaranteed level of **99.7%** in any particular month, then NewNet shall credit the Customer using the following guide:

Availability %	Reimbursement rate (% of monthly charge)	Maximum outage period (hours)
Above 99.7	0	2.23 hours
99.00 – 99.69	5	7.44
95.00 – 98.99	10	37.2
90.00 – 94.99	15	74.4
85.00 – 89.99	20	111.6
80.00 – 84.99	25	148.8
<i>Below 79.99</i>	35	<i>Exceeds 150 hours</i>

Platinum Service Level Guarantee

In the event that availability falls below the level of **100%**, then NewNet shall credit the Customer using the following guide:

Availability %	Reimbursement rate (% of monthly charge)	Maximum outage period (hours)
Above 99.7	5	2.23 hours
99.0 – 99.69	10	7.44
95.00 – 98.99	15	37.2
90.00 – 94.99	20	74.4
85.00 – 89.99	25	111.6
80.00 – 84.99	30	148.8
<i>Below 79.99</i>	40	<i>Exceeds 150 hours</i>

"Availability" means the availability of a Server or Web Site as demonstrated by means of a trace route program.

25. LAW AND ARBITRATION

25.1 These Conditions and all Agreements are subject to the laws of England.

25.2 These Conditions incorporate the provisions for arbitration if any are available under any Code of Practice issued by the Network Operator under the provision of its licence. Any dispute which may arise between the parties concerning this Agreement shall be determined either in accordance with such arbitration procedure, if any, or by the High Court of Justice in England and the parties hereby submit to the exclusive jurisdiction of that court for such purpose.