



## **Powernet On Site Server Hosting Terms and Conditions**

### **1. Definitions and Interpretation**

**1.1** In these terms and conditions the following words and phrases shall, unless the context otherwise requires, have the following meanings:-

**Acceptable Use Policy**

the acceptable use policy from time to time issued by the Company (a current copy of which is attached hereto);

**Business Day**

a day (other than a Saturday or Sunday) on which the clearing banks are open for business in the City of London;

**Client**

the person(s) firm or Company whose details are set out in the Schedule hereto;

**Commencement Date**

the earlier of the date specified in the Schedule or on which the Company makes the Client's Web Site available to third parties via the Internet;

**Company**

Power Internet Limited;

**Fees**

the fees set out in the Schedule for the provision of the Services, together with any other charges made pursuant to these Conditions;

**Server**

any server owned or operated by the Client

**Services**

the provision by the Company to the Client of on site server hosting including provision of power supply and security services specified in the Schedule together with any other service option details of which are set out in the Schedule;

**Term**

the period set out in the Schedule (subject to a minimum period of three months) from and including the Commencement Date renewable automatically for similar periods unless and until terminated in accordance with these Conditions;

Unless the context otherwise requires references to clauses and Schedules shall be construed as references to clauses and Schedules of these Conditions. Headings are inserted for convenience only and shall not affect the construction or interpretation of these Conditions.

## **2. Company Services**

In consideration of the Client paying to the Company the Fees in accordance with the provisions of Clause 5 and the Schedule to these Conditions the Company shall provide Services to the Client.

## **3. Clients' Obligations**

**3.1** The Client is responsible in all respects for the content of its own server and the hereby undertakes that the Web Site pages and server contents do not and will not violate any applicable law and that it shall at all time comply with the Acceptable Use Policy, the provisions of which are hereby incorporated into these Conditions as if the same were set out herein in extension.

**3.2** The Client shall obtain and be responsible for obtaining and complying with all necessary legal permission for any works it includes on the server.

**3.3** The Client shall provide the Company with material and data in such form as shall be requested by the Company failing which the Company shall be entitled to make such charges as it may deem necessary to recoup its expenses in conversion to or use of other software so as to be able to host the server. Any web page of the Client liable to offend or containing links to adult material must display on any path of links from the index page of any directory to such material, so that anyone following such a path will receive a clear warning before the material is displayed as to the nature of its contents.

**3.4** The Client is responsible for backup of its own server as the Company does not offer recovery facilities as a service to the Client.

**3.5** Upon registration, the Client shall provide the Company with an up to date administration address and an address and contact in the UK authorised to accept service of proceedings on its behalf and shall inform the Company immediately of any changes to such addresses or contacts.

**3.6** The Client shall not (without the prior written consent of the Company) during the Term be entitled to approach any domain registrar to request that the domain be moved to another internet service provider.

**3.7** In the event that the Client fails to return the signed copy of these Conditions and uploads to the server, the Client shall be deemed to have agreed to and accepted these Conditions for use of the commercial web server.

## **4. Company's Rights and Obligations**

**4.1** The Company shall use reasonable endeavours to perform the Services and shall as soon as reasonably practicable on or after the Commencement Date provide the Client with an area in which to host the server and power supplies thereon.

**4.2** The Company gives no warranty that access to the Server and the Client's Web Sites thereon shall be uninterrupted or error-free.

**4.3** The Company (in its absolute discretion) shall be entitled in the event that access to the Client's server exceeds the permitted bandwidth as provided in the Schedule to: suspend access to the server Site; move the server to a high performance service or require the Client to move its server to another; and/or increase its charges to the Client to take account of the additional bandwidth being used.

**4.4** Notwithstanding any other provision the Company shall be entitled without notice at any time to change the bandwidth or storage allocation and to make any changes to the Services which are necessary to comply with any applicable safety, security or other statutory requirements, or which do not materially affect the nature or quality of the Services.

## **5. Financial Provisions**

**5.1** The Client shall pay to the Company the Fees on the basis specified in the Schedule. The Company in its sole discretion shall be entitled to charge such additional fees as a result of the Client's instructions or lack of instructions or information or any cause attributable to the Client.

**5.2** All charges of the Company are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.

**5.3** If payment is not made on the due date, 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 an annual rate of 3 per cent above the base rate of Lloyds Bank plc from time to time and such interest shall accrue from the due date until the outstanding amount is paid in full.

**5.4** The Company shall be entitled to review the Fees, on the anniversary of the Commencement Date and shall notify the Client in writing of any increase or decrease in such fees and such increase or decrease shall take effect from the date specified in such notification.

## **6. Domain Name**

In the event that the Client contracts for domain name registration services the Company shall endeavour to procure the registration of such domain name as the Client may request as set out in the Schedule or as advised to the Company in writing by the Client. However, the Company shall not be liable in the event that such requested domain name is not registerable or in the event that the relevant domain name regulatory authority suspends or revokes any registration of such domain name. The Company shall not act as agent for or on behalf of the Client in any dealings with regulatory authorities.

## **7. Company's Remedies**

In the event that the server is in breach of the Acceptable Use Policy or the Company for whatever reason decides it is necessary or in its best interests to do so (including if the Client is in breach of its obligations or fails to pay the Fees) the Company shall be entitled to:- suspend or bar access to the server for such period as it shall consider fit; remove all or any part of the Client's Web Site from the Company's Server; and/or delete all or any data, files or other information that is stored on the the Server on which the Client's Web Site is stored; and the Company reserves the right (in its sole discretion) to suspend use by Client of any CGI-bin that may have a detrimental effect on the CGI Server without prior notice.

## **8. Warranties and Liabilities**

**8.1** The Company does not give any warranty, guarantee or other term as to the quality, fitness for purpose or otherwise of any goods or other services supplied by a third party, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods or services to the Company.

**8.2** The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any exercise of the Company's rights or remedies under these Conditions including without limitation the suspension of access to the server or deletion, corruption, loss or removal of data, file or material stored on the server or removal of the Client's Web Site from the Server or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

**8.3** Except as expressly provided in these Conditions, the Company shall not be liable to the Client 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 any contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Company, its servants or agents or

otherwise) which arise out of or in connection with the Services hereunder or their use by the Client, and the entire liability of the Company under these Conditions shall not exceed the proportionate amount of the Fees.

## **9. Termination**

**9.1** These Conditions shall continue in force for the Term Provided always that the Client shall be entitled to terminate these Conditions at any time after the minimum period of three months of the Term by giving to the Company not less than 90 days' written notice of termination.

**9.2** Notwithstanding the provisions of clause 9.1, either party shall be entitled forthwith to terminate these Agreement by written notice to the other if :-

**9.2.1** that other party commits any breach of any of the provisions of these Conditions and, in the case of a breach capable of remedy, fails to remedy the same within thirty days after receipt of a written notice giving particulars of the breach requiring to be remedied;

**9.2.2** an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party; that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order; that other party goes into liquidation or becomes bankrupt; the other party ceases or threatens to cease to carry on business; or

**9.2.3** anything analogous to any of the foregoing under the law of any applicable jurisdiction occurs in relation to that other party; or

**9.3** Upon termination of these Conditions for whatever reason, the Company shall discontinue the server from it's network without any liability whatsoever.

**9.4** Termination of these Conditions shall be without prejudice to any other rights or remedies a party may be entitled to thereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision on or after such termination. Subject to the foregoing, neither party shall thereafter have any further obligation to the other under these Conditions;

**9.5** Upon termination of these Conditions for whatever reason all due or outstanding fees and expenses owed by the Client to the Company shall forthwith become due and payable.

## **10. Miscellaneous**

**10.1** These Conditions constitute the entire agreement between the parties as to the subject matter of these Conditions and supersedes all prior oral or written agreements, understandings or arrangements between them relating to the provision of the Services.

**10.2** The Company shall not be liable to the Client for any loss arising from or in connection with any representations or undertakings made prior to the Commencement Date other than those confirmed by a duly authorised director of the Company in writing and expressly incorporated or referred to in these Conditions.

**10.3** If any provision of these Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of these Conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

**10.4** The Client shall not be entitled to assign these Conditions nor all or any of its or their rights and obligations hereunder without the prior written consent of the Company.

**10.5** The waiver by either party of a breach or default of any of the provisions of these Conditions by the other party shall not be construed as a waiver of any succeeding breach of

the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

**10.6** In the event of there being a conflict between the terms of these Conditions and the terms of the Acceptable Use Policy shall apply.

## **11. Notice**

All communications between the parties with respect to these Conditions shall be delivered by hand or sent by first-class post (or if the recipient is in another country by prepaid airmail) to the relevant address(es) stated in these Conditions or to such other address as the addressee may from time to time have notified for such purpose, or sent by facsimile transmission or electronic mail (with confirmation by letter posted first-class within 24 hours). Communications shall be deemed to have been received within two Business Days (if sent by first-class post) or seven Business Days (if sent by prepaid airmail) after posting exclusive of the day of posting.

## **12. Indemnity**

The Client hereby undertakes that it will, without prejudice to any other right of action which the Company may have, at all times keep the Company fully and effectively indemnified against any liability (which liability shall include, without limitation, all losses, costs, claims, expenses, demands, actions, damages, legal and other fees and expenses on a full indemnity basis) which the Company may suffer or incur as a result of, or by reason of, any breach or non-fulfilment of any of the Clients obligations under these Conditions, any breach of third party intellectual property rights or the use of the Services.

## **13. Governing law and jurisdiction**

These Conditions shall be governed by and construed in accordance with the laws of England. The Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts.