



Sohonet Limited

Standard Terms and Conditions for Nibble Internet Service (2008)

These terms and conditions are applicable only to this Agreement and shall not be construed, understood or interpreted as relating to or forming a part of any future agreement between the parties hereto. Any variation, amendment or future agreement signed by both parties hereto shall be treated as a new agreement to the exclusion of the terms and conditions herein.

1. Definitions

1.1 In this Agreement unless the context otherwise requires:

"**2003 Act**" means the Communications Act 2003 or any re-enactment or amendment of it.

"**Agreement**" means the contract made between you and us which incorporates:

- a) the Order Form and applicable schedules;
- b) those sections of these terms applicable to the Services; and
- c) any documents referred to in these terms.

"**Charges**" means the charges, including but not limited to the Installation Charges and Monthly Charges, payable for the Services.

"**Commencement Date**" means the earlier of:

- a) the date upon which the Services first become available to the Customer; or
- b) where Sohonet is unable to make the Services available to the Customer on the Target Commencement Date due to the Customer's failure to meet its obligations under clause 6.1, thirty (30) calendar days following the Target Commencement Date.

"**Confidential Information**" means:

- a) all information designated as such by either party in writing;
- b) business information that is or could reasonably be expected to be confidential or not generally known; and
- c) all information, know-how and records (whether or not confidential and no matter in what form held) including (without prejudice to the generality) all formulas, designs, specifications, drawings, data, manuals and instructions and all customer lists, sales information, business plans and forecasts, all developments, trade secrets, all technical or other expertise, licensed software, and all source code, source documentation, ideas, updates and any non-public information regarding the business of a party provided to either party by the other party where such information is marked or otherwise communicated as being "proprietary" or "confidential" or the like, or where such information is, by its nature, confidential.

"**Customer Equipment**" means all equipment other than Sohonet Equipment.

"**Facilities**" means any and all devices supplied by Sohonet used to deliver Services, including but not limited to all terminals and other equipment, wires, lines, circuits, ports, routers, switches, channel service units, data service units, cabinets, racks,

sohonet the surest path*

60 poland street
london w1f 7nt
uk
t +44 (0)20 7292 6900
f +44 (0)20 7292 6901
www.sohonet.co.uk

private rooms and the like. Facilities shall not include any such devices sold to the Customer by Sohonet and paid for by the Customer or owned by Customer or any third party.

"**Installation Charges**" means the installation charges specified in the Order Form from time to time.

"**IP**" means internet protocol.

"**Intellectual Property Rights**" means patents, trademarks, registered designs, service marks, utility models, applications for any of the foregoing and the right to apply thereof in any part of the world, copyright (and the rights in the nature of copyright), topography rights, brand names, trade names, logos, get-up, know how, rights, licences or consents in relation to any of the foregoing; all or any similar or equivalent rights arising or subsisting in any part of the world.

"**Licensed Software**" means computer software, in object code format only, the use of which is required for use of the Services.

"**Minimum Period**" means the minimum period in which the Services shall be supplied by Sohonet to the Customer as detailed on the Order Form.

"**Monthly Charges**" means the monthly charges specified in the Order Form from time to time.

"**Network**" means the Sohonet private electronic communications network.

"**Office Hours**" means 9am to 5.30pm Monday to Friday, excluding all public and bank holidays.

"**Order Form**" means the order form described as a "Quote for the Provision of Sohonet Nibble" (or as amended from time to time), signed by you, detailing the Services, Charges and other relevant information concerning the relationship between you and us which shall form part of this Agreement.

"**Service(s)**" means those services to be supplied as specified in the Order Form from time to time by Sohonet and, where applicable, any services and facilities provided in connection with the Services.

"**Site**" means the location(s) at which the Services are to be provided as detailed in the Order Form.

"**Sohonet Equipment**" means equipment (if any) supplied by or on behalf of Sohonet to the Customer or placed at or on the Site for the purposes of providing the Services.

"**Target Commencement Date**" means the date set out in the Order Form or otherwise provided to the Customer in writing by Sohonet upon which it is anticipated the Services will be available to the Customer.

"**we**" or "**us**" or "**Sohonet**" means Sohonet Limited or such other associated company or affiliates as may be detailed on the Order Form.

"**you**" or "**Customer**" means the customer executing the Order Form.

1.2 Any reference in this Agreement to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment of such act for the time being in force and to include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder and any condition attaching to it.

1.3 The headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.

1.4 References in this Agreement to clauses, sections or schedules are references to clauses and sections of or schedules to this Agreement. Throughout this Agreement wherever required by context the use of the singular includes the plural and vice versa.

2. **Provision of Services**

2.1 In consideration of the payment of the Charges, and subject always to evidence of an acceptable credit rating, Sohonet shall provide the relevant Services from the Commencement Date in accordance with the terms and conditions of this Agreement.

2.2 It is a pre-condition of the availability of the Services at any and all times that the Customer continue to meet its obligations under this Agreement, and have in place all necessary Customer Equipment. Sohonet shall have no liability to the Customer if at any time such requirements are not met for any reason.

3. **Order Form**

sohonet the surest path*

60 poland street
london w1f 7nt
uk
t +44 (0)20 7292 6900
f +44 (0)20 7292 6901
www.sohonet.co.uk

3.1 To order any Service, the Customer shall submit to Sohonet an Order Form, completed with Sohonet's assistance. The Order Form shall specify the Service and its background detail (if any), the Site, the Charges and any applicable term and/or Customer commitment to order and pay for a minimum volume of Services during an agreed term.

3.2 The provision of a Target Commencement Date to the Customer by Sohonet in respect of the Services set out in an Order Form completed in accordance with clause 3.1 shall constitute Sohonet's acceptance of that Order Form, so long as full payment of the installation charge and first monthly charges detailed in the Order Form have been received by Sohonet as cleared funds, and Sohonet will furnish such Services in accordance with the terms of this Agreement.

4. **Commencement and duration**

4.1 The term of this Agreement shall be from the Commencement Date until the end of the Minimum Period, unless terminated earlier in accordance with the provisions herein, and continuing thereafter until terminated in accordance with section 11 hereof.

5. **Changes to the Service**

5.1 Sohonet reserves the right at any time to make any modification, change, addition to or replacement of any part of the Network or Services or equipment specification or access control where this is required to conform with any applicable safety or other statutory or regulatory requirements or the reasonable requirements of any regulatory body or internet governing body or as otherwise required by Sohonet in the normal course of running its business.

6. **Third party notifications and rights of third party**

6.1 The Customer shall at its own cost grant or procure all permissions, licences, wayleaves, waivers, consents, registrations and approvals necessary for, or considered desirable by Sohonet to deliver, install, keep installed and maintain at the Site any Sohonet Equipment, provided always that Sohonet shall not be liable or responsible for any equipment not supplied by Sohonet.

6.2 Nothing in this Agreement shall be read, construed or understood as conferring or purporting to confer on any third party, other than the parties to this Agreement, any rights, obligations or benefit herein.

7. **Provisions relating to Service**

7.1 The Customer will use the Services in accordance with the provisions of this Agreement and such reasonable operating guides or instructions as may be notified by Sohonet to the Customer from time to time, and for lawful purposes, inter alia in accordance with the relevant provisions of any Act of Parliament and any authorisations granted under the 2003 Act or any other Act of Parliament which governs the running of a telecommunication or internet communication system, whether in force at the Commencement Date or entering into force at any time thereafter.

7.2 The Customer will not use the Services or Network or permit the Services or Network to be used:

- a) for any fraudulent or unauthorised purpose, including those prohibited under this Agreement or by legislation or code of practice or guidelines issued by a regulatory authority; or
- b) for the transmission of any material which is defamatory, indecent, offensive, threatening or abusive or of an obscene or menacing character or otherwise unreasonable; or
- c) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to Intellectual Property Rights and confidentiality rights); or
- d) in a manner which allows third parties to interfere with or gain unauthorised access to any part of or corrupt the Services and/or Network in any way or to use the Service to gain unauthorised access to any computer system or which causes or is likely or intended to cause detriment or harm or loss of control to any computer systems; or
- e) in any other way which is unlawful or in breach of any Act of Parliament (or which places Sohonet in breach of any Act of Parliament, including in particular the 2003 Act), or any other instruction or direction of Sohonet; or
- f) for the purposes of unsolicited advertising or other unsolicited bulk communications to multiple recipients or in association with such purposes; or
- g) in violation of the acceptable use policy of any network or facility through which data may pass as part of the Customer's use of the Services; or
- h) in violation of any applicable local laws applying to any network or facility through which data may pass as part of the Customer's use of the Services.

sohonet the surest path*

60 poland street
london w1f 7nt
uk
t +44 (0)20 7292 6900
f +44 (0)20 7292 6901
www.sohonet.co.uk

- 7.3 The Customer, and its authorised end-users if applicable, shall:
- a) not allow any third party use of or to interconnect to the Services or Network;
 - b) not use the Network for any use other than to access the Services;
 - c) connect to the Services through the Network only;
 - d) comply with any and all acceptable use policies issued by Sohonet in relation to the Services and/or the Network from time to time;
 - e) use only IP, NSAP, AS-number and other network addresses supplied by Sohonet to identify their network endpoints to the Services or Network;
 - f) not resell, subcontract or lease the Services to any third party except with the prior written consent of Sohonet; and
 - g) shall not use the Services in any other way that in Sohonet's reasonable opinion would or might bring the Services or Sohonet into disrepute.
- 7.4 Upon the reasonable request and at the sole discretion of Sohonet (including, inter alia, any request resultant from notification by any Government regulator or law enforcement body that particular Internet sites or newsgroups are carrying illegal material), the Customer shall take such steps as are necessary to prevent access to such sites or newsgroups as are notified by Sohonet to the Customer.
- 7.5 The Customer shall ensure that a suitable firewall and/or anti-virus protection software is installed on any computer or other hardware used by the Customer to access the Service or Network and acknowledges that it is the Customer's sole responsibility to ensure that such computer or hardware and any such software is properly installed, configured and maintained.
- 7.6 The Customer shall ensure Sohonet Equipment is connected to a continuous mains electricity supply and shall not damage Sohonet Equipment. The Customer shall take care of Sohonet Equipment at all times whilst on Site and shall provide a safe working environment for Sohonet employees or subcontractors who need to access the Sohonet Equipment on Site. If Customer damages Sohonet Equipment it shall pay for any replacement or repair as Sohonet shall determine. Title to and ownership of Sohonet Equipment shall not pass to the Customer.
- 7.7 The Customer shall not make or cause to be made any modification, amendment or alteration to the Sohonet Equipment.
- 7.8 Sohonet shall provide static IP address(es) to the Customer. The Customer may only use such static IP address(es) in connection with the Service provided under this Agreement and shall not gain any rights of ownership or title in such address(es).
- 8. Suspension of Services**
- 8.1 Sohonet may (without prejudice to its other rights) suspend the provision of any Service hereunder and without prior notice, in whole or in part, until further notice with immediate effect if:
- a) Sohonet is obliged to comply with an order, instruction or request of Government, court of law, emergency services organisation, or other competent administrative authority, including OFCOM; or
 - b) Sohonet needs to carry out work relating to upgrading, repair or maintenance of the Service or Network or any part thereof including PoPs, servers or any component or part of connectivity and Sohonet shall only be required to give such notice to the Customer concerning such suspension as is reasonable in the circumstances; or
 - c) the Customer does not pay any sum due and owing to Sohonet under this Agreement by its due date; or
 - d) the Customer is in breach of any of the terms of this Agreement.
- 8.2 Sohonet expressly reserves the right, at its sole discretion, to pursue any remedies against the Customer that it believes are warranted, including but not limited to the issuance of written or verbal warnings, filtering or blocking the Service or Network or taking legal action where the Customer is in breach of this Agreement and such actions may be taken without prior notice to the Customer.
- 9. Charges, payments and interest**
- 9.1 The Charges comprising the Installation Charges and the first month's service charge are due within seven days of receipt of Invoice which shall be provided with the signed Order Form, and payments of subsequent monthly charges are to be made by Standing Order in advance of each month's service. Sohonet will provide invoices electronically to an agreed email address.

sohonet the surest path*

60 poland street
london w1f 7nt
uk
t +44 (0)20 7292 6900
f +44 (0)20 7292 6901
www.sohonet.co.uk

- 9.2 The bandwidth usage provided under this Agreement shall be that level stated in the Order Form. Sohonet shall track the Customer's bandwidth usage to ensure that usage remains within the agreed limit of supply.
- 9.3 All sums due to Sohonet under this Agreement are stated net of any applicable taxes, licence and permit fees which may be payable by the Customer in accordance with the relevant regulations in force at the time of making the taxable supply and all such foregoing taxes shall be paid by the Customer.
- 9.4 Payment of all sums due under this Agreement shall be made by the Customer in full without any set-off, deductions or withholding whatsoever (regardless of whether the Customer disputes the whole or part of an invoice) on the relevant date of the relevant invoice. In the event that the Customer disputes any portion of Sohonet's invoice, the Customer must pay the undisputed portion of the invoice and submit a written claim for the disputed amount. All claims must be submitted to Sohonet within thirty (30) calendar days of date on invoices for those Services. If the disputed portion of the invoice is not notified to Sohonet within the thirty (30) calendar days allowed for communicating disputes, the Customer waives the right to dispute such charges. The decision of Sohonet is final and binding on the Customer.
- 9.5 Time of payment of all sums due under this Agreement to Sohonet shall be of the essence. For the avoidance of doubt, no provision within section 9 hereof shall in any way be deemed to authorise, whether expressly or impliedly, any late payment by the Customer.
- 9.6 Sohonet reserves the right to charge daily interest on all outstanding amounts owing to Sohonet by the Customer until payment is received in full at the rate equal to two percent (2%) above HSBC plc base lending rate as current from time to time whether before or after judgement.
- 9.7 In the event that the Customer fails to make a payment to Sohonet in accordance with the above provisions, or Sohonet is unable to recover monies from the Customer's bank due to insufficient funds, Sohonet may charge the Customer a fee of £100 which reflects the administrative costs incurred by Sohonet in processing the abortive payment.
- 9.8 Charges may be amended by Sohonet on notice to the Customer from time to time and shall be effective twenty-eight (28) calendar days after notice, unless the notice specifies otherwise. Continued use of the Service after such notice shall constitute acceptance of the amended Charges.

10. Sole Remedy in Event of Loss of Connectivity

- 10.1 Sohonet shall use all reasonable endeavours to advise the Customer in advance of any scheduled withdrawal of service for maintenance and servicing and shall use all reasonable endeavours to ensure, wherever possible, the continuity of Services at all times. The Customer acknowledges the Service utilises the internet and agrees that use of the internet is at the Customer's own risk. Sohonet does not guarantee an uninterrupted service. Sohonet does not guarantee the security of the Service against unauthorised or unlawful use. Sohonet is not responsible for any technical or other support to the Customer's local area network. The Customer shall be solely responsible for maintaining user and network access security to the internet and shall ensure that any Customer Equipment attached to the Service or Network is technically compatible with the Service and/or Network and is approved for that purpose under any applicable law or regulation.
- 10.2 Upon the Customer notifying Sohonet of any failure or inability to access a Service provided pursuant to this Agreement during Office Hours, and upon Sohonet then determining in their reasonable commercial judgment that the Service is unobtainable by the Customer due to the default of Sohonet, then the sole obligation of Sohonet and sole remedy of the Customer shall, subject to clause 10.3, be as follows:
- a) for unavailability of the Service for four (4) or more consecutive hours per calendar month, a credit of the Customer's account for such month of the pro-rata charge for one (1) day's service; or
 - b) for unavailability of the Service for one (1) or more consecutive days per calendar month, a credit of the Customer's account for such month of the pro-rata charge for one (1) week's service; or
 - c) for unavailability of the Service for five (5) or more consecutive days per calendar month, a credit of the Customer's account for such month of the pro-rata charge for one (1) month's service.

If Sohonet is requested to attend the Customer's Site and does not find a fault or determines that the Customer or third party caused the fault, Sohonet will apply a charge of £150 per Site visit during Office Hours and £250 per hour per Site visit outside Office Hours. A minimum call-out fee of two hours shall apply.

sohonet the surest path*

60 poland street
london w1f 7nt
uk
t +44 (0)20 7292 6900
f +44 (0)20 7292 6901
www.sohonet.co.uk

10.3 No remedy shall be available as a result of any inability to obtain a Service provided pursuant to this Agreement which occurs as a result of:

- a) repair, maintenance and servicing works carried out or relating to the Service; or
- b) withdrawal of services in accordance with section 8 or the termination provisions herein; or
- c) a loss of the Service due to a fibre break and where the Customer has not taken any alternative or resilient service from Sohonet which would allow Sohonet to re-route the electronic communications signals, or a loss of the Service due to loss of internet connectivity or access. Sohonet shall not be liable or responsible to the Customer for any loss of email or web-site availability.

11. Termination

11.1 The Customer may, after expiry of the Minimum Period, terminate this Agreement by providing no less than ninety (90) calendar days written notice to Sohonet of termination.

11.2 Sohonet shall have the right to terminate this Agreement forthwith in the event that:

- a) a trustee, liquidator, receiver, administrative receiver or administrator is appointed over the Customer or any part of its undertaking or assets which relate to the Services or the distribution thereof or the Customer becomes insolvent or unable to pay its debts as they mature or ceases to pay its debts as they mature in the ordinary course of business, makes an assignment or arrangement for the benefit of creditors generally, or makes a proposal to creditors generally, or an application to any Court under the legislation of any country for relief from its debt obligations or to restructure the same or any proceedings are commenced by or on behalf of the Customer in relation to the bankruptcy, insolvency, or other debtors relief of the Customer or the Customer passes a resolution or takes any other action to effect its winding up or the termination of its existence or a Court of competent jurisdiction shall make an order or take any action to that effect; or
- b) the Customer defaults in due performance or observance of any material obligation under this Agreement, or other agreements made with Sohonet and (in the case of a remediable breach) fails to remedy the breach within seven (7) days of notice of breach being given in any form by Sohonet; or
- c) the Customer is prohibited by operation of any Act or other provision of law or court order from running or providing an Internet service;
- d) the Customer is in breach of any of the terms of this Agreement or is using the Service and/or Network in any way which, in the sole opinion of Sohonet, is unacceptable; or
- e) the Service is no longer to be provided by Sohonet for any reason whatsoever.

12. Consequences of termination

12.1 Upon termination of this Agreement for any reason, including but not limited to loss or damage to the Facilities installed on the Site (unless caused by the negligence or wilful misconduct of the employees or agents of Sohonet), the Customer shall:

- a) immediately cease to make use of the relevant Service; and
- b) pay all charges and outstanding invoices and other monies due to Sohonet forthwith; and
- c) ensure that they do not mislead or allow others to believe that they have any contractual arrangement with Sohonet as specified hereunder; and
- d) forthwith cease to make use of any trade mark or other Intellectual Property Rights that belong to Sohonet and destroy or return to Sohonet (at Sohonet's option) all material upon which such Intellectual Property Rights exist.

12.2 Where there are any amounts outstanding by the Customer to Sohonet following the termination of this Agreement, Sohonet may retain any Customer Equipment under Sohonet's control pending satisfaction in full of the Customer's payment obligations under this Agreement.

12.3 Upon termination for whatever reason static IP addresses will revert to Sohonet.

sohonet the surest path*

60 poland street
london w1f 7nt
uk
t +44 (0)20 7292 6900
f +44 (0)20 7292 6901
www.sohonet.co.uk

13. Intellectual Property Rights

- 13.1 All legal and beneficial rights in software, hardware or other equipment in whatever form which Sohonet provides to the Customer for the purpose of using the Services or Sohonet Equipment will remain at all times Sohonet's property or the property of its licensor.
- 13.2 To the extent that it is so entitled, Sohonet grants the Customer a non-exclusive non-transferable licence to use any software which Sohonet provides to the Customer for the purpose of using the Services or Sohonet Equipment for the duration of this Agreement and for no other purpose. The Customer will not reproduce such software, save that the Customer will be entitled to make a single back-up copy for security purposes only. The Customer will not modify, adapt, translate, reverse engineer, decompile or disassemble such software or create any derivative work based thereon or merge or include such software with or in any other software.
- 13.3 Copyright in all documents, drawings designs and information including if applicable any access codes supplied to the Customer in connection with this Agreement shall remain vested in Sohonet or the copyright owner. Such documents, drawings, designs and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without Sohonet's express prior written consent.
- 13.4 Sohonet shall have the exclusive right to commence, defend, conduct and settle all proceedings involving an infringement or alleged infringement of Sohonet's Intellectual Property Rights or relating to the validity thereof.
- 13.5 The Customer agrees to promptly notify Sohonet in writing of any infringements or violations by any third party of Sohonet's Intellectual Property Rights as soon as these become known and shall make no admissions without Sohonet's consent. The Customer shall, at Sohonet's sole expense, give all reasonable assistance and such documentation as Sohonet may (without limitation) require, in connection therewith.
- 13.6 If at any time any allegation of infringement of Intellectual Property Rights is made or in Sohonet's opinion is likely to be made, Sohonet may, at its sole discretion and at its own expense, procure for the Customer the right to continue using the relevant Intellectual Property Rights or the know-how on terms not restricting the Customer's use of the same by this Agreement.
- 13.7 The Customer acknowledges that all Intellectual Property Rights belonging to Sohonet are and shall remain (as between Sohonet and the Customer) the sole property of Sohonet.
- 13.8 Nothing in this Agreement shall act as an assignment by Sohonet to the Customer of any copyright, patent, registered design, name, mark, logo or other Intellectual Property Rights whatsoever belonging to Sohonet.
- 13.9 The Customer undertakes and agrees not to use, whether in the course of business or otherwise, in relation to any goods or services of the Customer (including inter alia any promotion and advertising) any registered or unregistered name, mark, design, logo or other similar Intellectual Property Rights belonging to Sohonet. For the avoidance of doubt (save where expressly authorised in writing after the date of this Agreement) no use may be made whatsoever by the Customer of the name Sohonet or any mark or logo or other Intellectual Property Rights relating thereto. All such Intellectual Property Rights and know-how generated from or arising in the performance of or as a result of this Agreement shall (to the extent that they are not already vested in Sohonet) vest in and be the absolute property of Sohonet.

14. Limitation of liability

- 14.1 Nothing in this Agreement shall exclude or restrict Sohonet's liability for death or personal injury resulting from the negligence of Sohonet or of its employees while acting in the course of their employment.
- 14.2 Unless otherwise expressly stated, Sohonet's liability arising in any twelve (12) month period commencing from the date specified in the Order Form and whether in contract, tort or otherwise including any liability for negligence howsoever arising out of or in connection with the performance of Sohonet's obligations under this Agreement shall be limited to the sum paid to Sohonet by the Customer pursuant to this Agreement in the previous twelve (12) months, in respect of all events.
- 14.3 Except as expressly provided herein, Sohonet does not make any warranties either express or implied and hereby disclaims all implied conditions, warranties and other terms of any kind as to service interruption, connectivity, delivery, continuity, freedom from error, delay, quality, fitness for purpose, suitability or performance to be provided under this Agreement or accuracy or content of information passing through any network and, except as expressly provided in this Agreement, Sohonet shall not be liable to the Customer under this Agreement in contract, tort or otherwise including any liability for negligence for any loss of revenue, business, contracts, anticipated savings, or profits, or any indirect, economic or consequential loss howsoever arising.

sohonet the surest path*

60 poland street
london w1f 7nt
uk
t +44 (0)20 7292 6900
f +44 (0)20 7292 6901
www.sohonet.co.uk

15. **Indemnity and undertaking**

15.1 Sohonet's obligations under this Agreement shall be solely to the Customer and the Customer agrees to indemnify, defend and hold harmless Sohonet from and against all and any liabilities claims and costs whatsoever (including but not exclusively legal costs, damages, fines, judgments and expenses) arising from any and all claims by any third party (regardless of cause of action and whether suffered directly or indirectly by Sohonet) in connection with or resultant from the use of the Service by the Customer or the provision of related services by the Customer or arising out of the breach of any term of this Agreement by the Customer.

15.2 The Customer shall indemnify and keep Sohonet indemnified and held harmless against all proceedings, costs, claims, actions, demands and expenses brought or made against or suffered by Sohonet arising out of or based upon any claim by any third party of infringement of Intellectual Property Rights (including unauthorised use) in connection with the use by the Customer of Sohonet's Intellectual Property Rights in accordance with the terms of this Agreement.

16. **Force majeure**

16.1 Neither party shall be liable to the other under this Agreement for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control including without limitation any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of Government, highways authorities, administrations or other competent authority, other telecommunications operators, the obstruction by a third party of line of sight between microwave or optical installations, war, military operations, riot, difficulty or delay in failure in manufacture, production or supply by third parties of equipment and/or services or of the equipment or services concerned including but not limited to technical problems which render it impracticable for Sohonet to perform in accordance with this Agreement. Failure by or inability of the Customer to make payments as required by this Agreement shall not be an event of force majeure for the purposes of this Agreement.

16.2 If any event described in clause 16.1 lasts for more than three (3) months from the date of its commencement and such event prevents Sohonet from performing its obligations in whole or in part during that period, either party shall be entitled (but not obliged) to immediately terminate this Agreement forthwith by giving written notice to the other party.

17. **General**

17.1 **Notices:** Any notices to be given hereunder shall, unless otherwise expressly stated, be in writing and shall be given by sending the same by post or facsimile transmission to the other party's address stipulated in this Agreement or such other address as may be designated in writing from time to time by the other party. Any notice sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered three (3) calendar days after its despatch. Any notice given by facsimile transmission shall be deemed to have been delivered on the next working day following transmission.

17.2 **Assignment:** The Customer shall not assign or delegate or purport to assign, delegate or otherwise deal with any of its rights and obligations hereunder, except if previously and expressly agreed in writing by Sohonet. Sohonet shall have the right to assign, sub-contract or otherwise deal with all or any of its rights and obligations under this Agreement to any Affiliate, or to other person.

17.3 **Modifications:** Sohonet shall have the right by notice in writing to the Customer to modify this Agreement at any time so as to comply with any regulations or other requirement applicable to or imposed upon Sohonet by any competent authority, and shall use its reasonable endeavours to ensure such modifications do not result in any deterioration in the Service provided to the Customer. Otherwise, this Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party.

17.4 **Waiver:** No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing and the remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law. Unless otherwise provided for any waiver shall be limited to the specific breach waived.

17.5 **Severability:** If any provision of this Agreement 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 this Agreement (as appropriate) and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

17.6 **Non-exclusivity:** The Agreement shall be without prejudice to any other arrangements or agreements that Sohonet may have with any customer for the provision of telecommunications, internet or similar services. For the avoidance of doubt, nothing in this Agreement shall prevent or otherwise restrict Sohonet from providing identical or similar services to any other party whatsoever.

sohonet the surest path*

60 poland street
london w1f 7nt
uk
t +44 (0)20 7292 6900
f +44 (0)20 7292 6901
www.sohonet.co.uk

- 17.7 **Entire agreement:** The terms of this Agreement shall represent the entire understanding between the parties in relation to the subject matter thereof and shall supersede all agreements and representations made by either party, whether oral or written.
- 17.8 **Relationship between the parties:** The parties are independent and unrelated persons and nothing herein shall be construed as creating any partnership, joint venture, agency or similar arrangement or relationship. Neither party shall have the power or authority, whether directly or indirectly, or through its servants to bind the other party to any agreement with any third person or otherwise to contract or enter into a binding relationship for or on behalf of the other party. Neither party shall make any representation nor warranty, express or implied, on behalf of the other party except as expressly provided for in this Agreement or otherwise agreed in writing between the parties.
- 17.9 **Confidentiality:** The Customer acknowledges that it is receiving Confidential Information under this Agreement belonging to Sohonet, and Sohonet acknowledges that it may receive Confidential Information under this Agreement belonging to the Customer, in each case including technical, business and financial information, and each party agrees to hold such information in the strictest of confidence and to take all reasonable steps to maintain the confidentiality of such information and to use such information only for the purposes of this Agreement, for the term of this Agreement and two years thereafter. These restrictions shall not apply to the extent that the information or material is obtained from third parties as a matter of right and without violation of any confidentiality or non disclosure obligation, is publicly available other than through the fault, negligence or breach of the receiving party, is disclosed to the public generally with the prior written approval of the disclosing party, is generally known in the field of telecommunications and Internet development and/or supply of related services or is known by the receiving party at the time of disclosure by the disclosing party. The Customer agrees not to disclose any terms and conditions of this Agreement to any party whatsoever, whether during or after the term of this Agreement and to return all Confidential Information belonging to Sohonet to Sohonet within one (1) calendar month of receipt of a written request from Sohonet, certifying in writing that it has complied in full with Sohonet's request and will continue to be bound by the undertaking set out in this Agreement. Notwithstanding anything in this clause, the Customer agrees that Sohonet may refer to the existence of this Agreement and the Services provided thereby and the name of the Customer (or any other associated company or affiliate of the Customer) in any publicity, advertisement or other disclosure of Sohonet.
- 17.10 **Survival:** Those provisions of clauses 13.1, 13.4, 13.6 and sections 14 and 15 of this Agreement of a continuing nature shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason whatsoever.
- 17.11 **Governing law:** The Agreement shall be governed by and construed and interpreted in accordance with the law of England and Wales, and the parties hereby agree to submit to the exclusive jurisdiction of the courts of England and Wales.

sohonet the surest path*

60 poland street
london w1f 7nt
uk
t +44 (0)20 7292 6900
f +44 (0)20 7292 6901
www.sohonet.co.uk