

## SERVERNET IT LIMITED

### TERMS AND CONDITIONS RELATING TO THE SUPPLY OF EQUIPMENT AND SERVICES

#### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply to the Contract.

**Charges:** means the Design Fee, the Equipment Cost and the Services Charges to be paid by you to us in accordance with the provisions of clause 8.1 of these Terms and any additional Charges agreed between you and us in accordance with clause 7 to be paid by you to us in accordance with the provisions of clause 8.2 of these Terms.

**Contract:** means the contract between you and us for the supply of the Equipment and Services incorporating these Terms and the Project Scope Statement once agreed in accordance with these Terms and any specific terms agreed in writing between you and us including any changes to the Services agreed in accordance with clause 7 of these Terms.

**Business Hours:** means 8am to 6pm Monday to Friday excluding public and bank holidays.

**Design Fee:** means the Design Fee set out in the Contract being the fee required to cover the preparation and agreement of the Project Scope Statement.

**Equipment:** means the computing and peripheral hardware to be installed by us in accordance with the Project Scope Statement.

**Equipment Cost:** means the cost of the Equipment specified in the Project Scope Statement.

**Force Majeure Event:** means a force majeure event having the meaning given in clause 13.2.

**Modifications:** means any modifications which we may require you to make at the Premises prior to the Start Date in order to facilitate the installation of the System.

**Order:** means your order for Equipment and Services as set out in the Contract.

**Phase 1:** means phase 1 of the Project as set out in the Project Scope Statement.

**Phase 2:** means phase 2 of the Project as set out in the Project Scope Statement.

**Phase 3:** means phase 3 of the Project as set out in the Project Scope Statement.

**Premises:** means the premises at which the System is to be installed in accordance with the Contract.

**Project:** means project for the installation of a System as described in the Project Scope Statement.

**Project Scope Statement:** means the detailed design plan setting out the scope of the System and setting out the estimated timetable for the Project and responsibilities for the provision of the Services agreed in accordance with clause 1.7 and attached to these Terms as Schedule 2 and as may be modified in accordance with clause 7.

**Services:** means the services to be provided by us under the Contract as set out in the Project Scope Statement.

**Service Charges:** means the service charges set out in the Project Scope Statement.

**Site Survey:** means a survey to be carried out by us at the Premises to ascertain the suitability of the Premises for the installation of the System.

**Start Date:** means the date we shall start providing the Services to you as specified in the Contract or, in absence of a date in the Contract, the date on which we actually begin to provide the Services.

**System:** means the integrated electronic system for home networking, telephony, heating / cooling, lighting, security and or multi-media entertainment systems to be installed at the Premises in accordance with the Project Scope Statement.

**“We”, “our” and “us”:** means Servernet IT Limited, a company registered in England and Wales under company registration number 05370893 whose registered office is at 44 Elizabeth Drive, Church Crookham, Fleet, Hampshire, GU52 6HW trading as Avant-Garde Concepts.

**Terms:** means the terms and conditions set out in this document.

**Third Party Licences:** means any licences relating to any Equipment supplied under these Terms.

**Training and Support:** means the training and support detailed in Schedule 2 to be provided by us as part of the Services.

**“You” and “your”:** means the person, firm or corporation whose details are set out in the Order.

**Your Equipment:** means any equipment, system, cabling or facilities provided by you and used directly or indirectly in the supply of the Services and/or in connection with the System.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.

1.3 Any reference to these Terms includes the schedules.

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to **writing** or **written** includes read-receipted or acknowledged e-mail.

1.6 Where the words **include(s)**, **including** or **in particular** are used in the terms, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.7 Any obligation in these terms on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

## **2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by you to purchase Equipment and Services from us in accordance with these Terms.

2.2 The Order shall only be deemed to be accepted when we issue written acceptance of the Order at which point the Contract shall come into existence with effect from the Start Date. Delivery of the draft Project Scope Statement by us shall constitute our acceptance of your Order.

- 2.3 The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by us relating to the Equipment and/or the Services, and any descriptions or illustrations contained in any catalogues or brochures (including without limit any specifications, technical data, performance criteria or storage information) are issued in good faith for guidance purposes only and do not form part of the Contract or have any contractual force.
- 2.5 These Terms apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which may be implied by trade, custom, practice or course of dealing.
- 2.6 Before preparing the Project Scope Statement we will undertake a Site Survey. Following completion of the Site Survey we will identify any Modifications that may be required to be made to the Premises which we will submit to you in writing.
- 2.7 If you do not agree to the Modifications within 7 days of the date of your receipt of our notice under clause 2.6 or you do not wish us to incorporate the Modifications into the Project Scope Statement, the Contract shall be deemed void from the beginning without liability on either party.

### **3 COMMENCEMENT AND DURATION**

- 3.1 We shall provide the Services to you on these Terms from the Start Date.
- 3.2 The Services supplied under the Contract shall continue to be supplied until the Project is completed in accordance with the Project Scope Statement, unless the Contract is terminated in accordance with clause d.

### **4. PROJECT SCOPE STATEMENT**

- 1.8 The Project Scope Statement shall be agreed in the following manner:
- (a) your Order shall set out the requirements and specifications of the System which you are requesting us to install and you shall supply us with any additional information we may reasonably require to allow us to prepare a draft Project Scope Statement;
  - (b) we shall, as soon as reasonably practicable after the Contract has come into force, provide you with a draft Project Scope Statement; and
  - (c) we and shall discuss and agree with you the draft Project Scope Statement and when it has been agreed, we shall both sign a copy of it and it shall become Schedule 2 to and subject to these Terms.
- 1.9 Once the Project Scope Statement has been agreed and signed in accordance with clause c, no amendment shall be made to it except in accordance with clause 1.20 and clause 1.42.
- 1.10 If you do not agree to the Project Scope Statement within the 7 day period specified, provided we have received the Design Fee from you, you may terminate the Contract without further liability to us.

### **3. OUR OBLIGATIONS AND WARRANTIES**

- 1.11 We shall use reasonable endeavours provide the Services to you in accordance with the Project Scope Statement in all material respects.

- 1.12 You acknowledge that we do not manufacture the Equipment. Consequently, you shall only be entitled to the benefit of any warranty or guarantee in relation to the Equipment as is given to us by the manufacturer of such Equipment which is capable of being assigned to you.
- 1.13 Any dates given by us shall be estimates only and time for performance by us shall not be of the essence of the Contract.
- 1.14 Unless we are prevented from doing so by a Force Majeure Event, the Services shall:
- (a) conform in all material respects with their description;
  - (b) are carried out with reasonable care and skill;
  - (c) be fit for any purpose we say they are fit for;
  - (d) be free from material defects in design, material and workmanship; and
  - (e) comply with all applicable statutory and regulatory requirements for supplying the Services in the United Kingdom.
- 1.15 This warranty is in addition to your legal rights in relation to any Services which are not carried out with reasonable skill and care or which otherwise do not conform with these Terms. Advice about your legal rights is available from the Customer's local Citizens' Advice Bureau or Trading Standards office.
- 1.16 Unless otherwise agreed by us in writing, the System is only being supplied for domestic and private use, and you agree not to use the System for any commercial or re-sale purpose.

#### **4. YOUR OBLIGATIONS**

- 1.17 You agree to:
- (a) co-operate with us in all matters relating to the Services;
  - (b) provide, for us, our agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Premises during business hours;
  - (c) warrant to us that your existing telecommunications and electrical equipment is in proper working order and complies with the applicable standards and approvals so as to enable us to supply the Services; and
  - (d) ensure that Your Equipment is in good working order and suitable for the purpose for which it is used in relation to the System and conforms with any specifications provided by us.
  - (e) where applicable, prepare the Premises for the supply of the Services and carry out any Modifications at your expense and in accordance with our reasonable instructions.
- 1.18 You shall provide us, in sufficient time, with any information and instructions relating to the Services that is or are necessary to enable us to provide the Services in accordance with these Terms.
- 1.19 If you do not or provide incomplete, incorrect or inaccurate information or instructions, we may cancel the Order by giving you written notice, and we may reserve the right to make an additional charge of a reasonable sum to cover any extra work that is required. We may also be entitled to Charge for any delay in access to the Premises which prevents us from carrying out the Services during Business Hours.

1.20 If our performance of our obligations under these Terms is prevented or delayed by any act or omission by you, we shall not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.

**5. CHANGE REQUEST**

1.21 We shall meet with you on a regular basis to discuss matters relating to the Project. If either party wishes to change the scope or execution of the Services, that party shall submit details of the requested change to the other in writing on our standard change request form (a copy of which is attached to the Project Scope Statement).

1.22 If either party requests a change to the scope or execution of the Services, we shall, within a reasonable time, provide a written estimate to you of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the Charges arising from the change;
- (c) the likely effect of the change on the Project Scope Statement; and
- (d) any other impact of the change on the Contract.

1.23 We will have no obligation to proceed with any change until the you have agreed the necessary variations in writing to the Charges, the Services, the Project Scope Statement and any other relevant terms of the Contract to take account of the change by signing the change request form.

1.24 Notwithstanding clause 1.23, we may, from time to time and by giving reasonable notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the Charges for the Services.

1.25 We reserve the right to charge for the time we spend assessing a request for change from you on a time and materials basis.

**6. CHARGES AND PAYMENT**

1.26 In consideration of the provision of the Services by us, you shall pay the Charges as follows:

- (a) The Design Fee upon execution of the Contract;
- (b) The Equipment Cost on agreement of the Project Scope Statement in accordance with clause 4.1(c);
- (c) 30% of the Service Charges upon completion of Phase 1 of the Project;
- (d) 30% of the Service Charges upon completion of Phase 2 of the Project;
- (e) 30% of the Service Charges upon completion of Phase 3 of the Project; and
- (f) 10% of the Service Charges 90 days after completion of the installation of the System;

1.27 Any additional Charges shall be paid within 30 days of the date of our invoice in respect of such Charges. Our charging structure is set out in the Project Scope Statement.

1.28 If you do not make any payment due to us by the due date for payment (as set out in clause 8.1), we reserve the right to charge you interest on the overdue amount at the rate of 4% a year above the base rate of The Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.

**7. INTELLECTUAL PROPERTY RIGHTS**

1.29 Upon the parties agreeing to the Project Scope Statement in accordance with clause 4.1(c), the copyright, design right and all other intellectual property rights in the Project Scope Statement prepared by us for you in connection with the System will, subject to receipt by us of the Design Fee, belong to you absolutely, save that we shall be entitled to retain a copy for our future use.

1.30 You may not use the materials, documents or other items detailed in clause 1.29 for any commercial purpose.

**8. CONFIDENTIALITY**

1.31 We shall maintain in strict confidence all information we may obtain about you in the course of providing the Services to you and will not disclose any such information other than to those of our employees and sub-contractors who need to know such information for the purpose of providing the Services under the Contract or may be required by law, court order or any governmental or regulatory authority.

1.32 We would however ask that you allow us to use photos of the System that do not identify your property or the Premises for marketing purposes.

**9. LIMITATION OF LIABILITY**

1.33 If either of us fail to comply with these Terms, neither of us shall be responsible to the other for any losses that the other suffers as a result, except for those losses which we or you could reasonably foresee would result from the failure to comply with these Terms at the time we entered into the Contract.

1.34 Under clause 5.6, you have agreed not to use the System for any commercial, business or re-sale purpose, and therefore we shall have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity unless we have expressly agreed to do so in writing in which case the Service Charges shall reflect our additional insurance costs in assuming such risk.

1.35 We will make good any damage caused by us or our sub-contractors in the course of performing the Services. We shall not be responsible for the cost of repairing any pre-existing faults or damage to the Premises that we discover in the course of performing the Services.

1.36 This clause does not exclude or limit in any way liability for:

- (a) death or personal injury caused by either party's negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability.

**10. TERMINATION**

1.37 Subject to clause 1.39, the Contract shall terminate automatically on completion of the Project in accordance with the Project Scope Statement.

1.38 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of these Terms and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
- (d) the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or
- (f) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
- (g) a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
- (h) a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days; or
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause c to clause i (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

1.39 On termination of the Contract for any reason:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;
- (b) in the event you have paid the Equipment Charge and the Equipment has been ordered in whole or in part by us, we shall deliver such of the Equipment as been ordered by us at the date of termination to you upon receipt of it;
- (c) in the event you have paid the Equipment Charge and the Equipment has not been ordered by us or has not been ordered in full, we shall refund the relevant part of the Equipment Charge to you in full; and
- (d) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

**11. FORCE MAJEURE**

1.40 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control.

1.41 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:

- (a) strikes, lock-outs or other industrial action; or
- (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; or
- (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or
- (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; or
- (e) impossibility of the use of public or private telecommunications networks.

1.42 Our obligations under these Terms are suspended for the period that the Force Majeure Event continues, and we will extend the time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Force Majeure Event.

**12. VARIATION**

Subject to clause 1.7 and clause 1.20, no variation of these Terms shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**13. ASSIGNMENT**

1.43 We may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.



**14. NOTICES**

All notices sent by you to us should be sent to Servernet IT Limited at 44 Elizabeth Drive, Church Crookham, Fleet, Hampshire, GU52 6HW. We may give notice to you at either the e-mail or postal address you give us in the Order or give us. Notice will be deemed received and properly served 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that the e-mail was sent to the specified e-mail address of the addressee.

**15. GENERAL**

- 1.44 If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.
- 1.45 If we fail, at any time while these Terms are in force, to insist that you perform any of your obligations under these Terms, or if we do not exercise any of our rights or remedies under these Terms, that will not mean we has waived such rights or remedies and will not mean that you do not have to comply with those obligations. If we do waive a default by you, it will not mean that we will automatically waive any subsequent default by you. No waiver by us of any of these Terms shall be effective unless we expressly say that it is a waiver and we tell you so in writing.
- 1.46 A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.
- 1.47 These Terms shall be governed by English law and we both agree to the non-exclusive jurisdiction of the English courts.

### **Schedule 1 Training and Support**

1. Upon completion of the installation of the System, we will provide a run through of the System at the Premises for the benefit of you and any additional family members wishing to attend to familiarise you with the System and its operation.
  
2. For a period of 90 days after the completion of the installation of the System, we will provide further support to you initially by telephone. If this does not remedy the issue, we will be able to assess the System remotely to resolve any queries you may have. If you are still not satisfied, we shall attend the Premises to deal with your enquiry face to face.