

vidHandlr

Conditions for the Provision of Service

1. DEFINITIONS

1.1 Please note that in these Conditions, the following words will have the following meanings:

"Account Balance" means the balance of credits held in a Customer account, as purchased by the Customer;

"Agreement" means the agreement between the Customer and the Company for the provision of the Services, incorporating these Conditions, the Standards of Service, your Order and any Schedule (all as defined below);

"Agreement Date" means the earlier of (i) date on which the Company accepts an Order from the Customer requesting the provision of Service or (ii) the date of signature of the Agreement by the Company;

"Bandwidth" means the allocated transmission capacity, measured in bits per second, of the network connection as specified in the Agreement;

"Business Days" means Monday to Friday between the hours of 09:00 and 17:00 excluding public UK holidays;

"Carrier" means any supplier of telecommunications services utilised by the Company to assist in delivery of the Service;

"Charges" means any of the charges payable by the Customer for the provision of the Services pursuant to this Agreement as notified to you by the Company when you entered the Agreement or thereafter in the event of any variation;

"Company System" means the telecommunication system and network operated by the Company in accordance with the General Conditions or such other permission granted to the Company as may be amended from time to time and, for the purpose of this Agreement, any apparatus leased by, or otherwise obtained by, the Company from a third party;

"Customer" means the person named as the Customer in the Order Form;

"Data Transfer" means all traffic sent in the use of the hosting service

"vidHandlr" means the brand name utilised by the Company in the provision of certain products and services;

"Equipment" means equipment which is supplied by or on behalf of the Company to the Customer or placed at or on Premises for the purpose of providing Service;

"General Conditions" means the general conditions of entitlement as set out in the notification issued by the Director General For Telecommunications on 22nd July 2003, in accordance with section 48(1) of the Communications Act 2003, pursuant to section 45 of said Act, as may be amended from time to time;

"Intellectual Property Rights" means any and all patents, trade marks, trade names, service marks, copyrights, rights in design (whether registered or unregistered), database rights, know-how and any other intellectual property rights of any kind, anywhere in the world;

"Internet" means the global data network comprising Internet connected networks using TCP/IP (Transmission Control Protocol/Intermit Protocol) Internet Standards means the protocols and standards defined in the following Internet documents: RFC 1009, 1122, 1123 and 1250 and any future such protocols and standards as appropriate;

"Order" means the application which you place for the provision of the Services on-line;

"Schedule" means any schedule(s) forming part of this Agreement;

"Service(s)" means bandwidth provision, video hosting and any other service or facility provided by us to you under this Agreement;

"Service Commencement Date" means the date(s) the Company advises the Customer the Services are available from;

"Standards of Service" means the standards of service document which forms part of this Agreement;

"User" means you, the Customer, or any person who makes use of the services through you or on your behalf;

"we", "us" and "our" means the Company and belonging to the Company as the case may be; and

"you" and "your" means the Customer who orders the Service and belonging to the Customer as the case may be.

1.2 Reference to any statute shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder.

1.3 Reference to words importing the singular only also includes the plural and vice versa where the context requires.

1.4 The headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.

1.5 By submitting a completed Order to the Company, you confirm to us that you have read, understood and accepted these Conditions. If there is anything you do not understand, please telephone us at +44-(0)161-424-9600.

2 DURATION

2.1 This Agreement shall come into effect on the Agreement Date and shall continue in full force and effect whilst the customer maintains a positive account balance unless and until terminated in accordance with Clause 8 of these Conditions or such other Clause as may be applicable in the circumstances. For the avoidance of doubt, in the event of termination of the Agreement, all Services provided under the Agreement will also be terminated.

2.2 The Company shall use its reasonable endeavours to provide the Service by the Service Commencement Date or such later date as may be notified to the Customer by the Company, subject to the Customer obtaining (at its own expense) all consents, approvals, servitudes, rights of way necessary for the provision of the Services to the Customer Premises and other similar rights relating to installation of the Company Equipment.

2.3 In the event that the Company agrees to provide new or additional services or change the Services under this Agreement at the request of the Customer a new initial period of thirty (30) days shall apply to each new, additional or changed services from the new service commencement date as advised by the Company.

3 Services

3.1 From the Service Commencement Date, the Company shall use its reasonable endeavours to provide the Services to the Customer in accordance with the Standards of Service.

3.2 The Company does not guarantee that the Services shall be error free or uninterrupted.

3.3 The Company cannot guarantee protection of the Service against unauthorised interruption or interception by third parties.

3.4 The Customer shall be required to comply with all laws, directions, codes or regulations relevant to the use of the Services.

3.5 The Customer shall ensure that the Services are not used:

3.5.1 in a way that does not comply with the Agreement or any legislation or applicable licence or that is in any way unlawful or fraudulent or, to your knowledge, has any unlawful or fraudulent purpose or effect; or

3.5.2 in breach of any reasonable and lawful instructions the Company might give to you from time to time which are necessary in the interests of health, safety, the quality of the Service, or the quality of the Carrier's telecommunications services; or

3.5.3 to send, knowingly receive, encourage the receipt of, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing or in breach of copyright, confidence, privacy or any other rights or which may contain viruses or other similar programs, or which causes overloads to the Company System; or

3.5.4 to send or procure the sending of unsolicited advertising or promotional material; or

3.5.5 an attempt made to use the Service in any way that modifies, decompiles or reconfigures the Service or any Equipment (if relevant) or software or copy any manual or documentation relating to the Service, without the Company's prior written consent, except as set out in this Agreement; or

3.5.6 to cause annoyance, inconvenience or needless anxiety; or

3.5.7 fraudulently or unlawfully.

3.6 You shall indemnify the Company against any claims or legal proceedings which are brought or threatened against the Company by a third party because the Service is used by you in breach of Clauses 3.5.1 - 7 above. To maintain the quality of the Service for other users, the Company reserve the right to block certain types of traffic without notice where they appear to contravene Clause 3.5.

3.7 You shall be responsible for insuring against all loss of or damage to data stored on or transmitted using the Service or the Company System.

3.8 You shall be responsible for adopting appropriate security measures for the protection of computer systems and the Company shall not be liable to you for any loss or damage that you suffer as a result of any virus or other hostile computer programme being introduced into your computers or computer systems as a result of your use of the Service and/or the Company System.

3.9 You shall not share use of the Service, or any part of it, with any person not a member of your company (or contracted to your company) whether directly or indirectly.

3.10 You shall ensure that any person with whom you share use of the Service under Clause 3.9 complies in full with this Agreement as if they were an original party to it. You are responsible for any misuse of the Service or breach of the Agreement by anyone with whom you share use of the Service.

3.11 You will co-operate with the Company's reasonable requests for information regarding your use of the Service and supply such information without delay.

3.12 Where you use the Service to reach networks and services not operated by the Company you will abide by the acceptable use policies or terms and conditions imposed by the operators of those networks and services.

4 Charges

4.1 The Company shall provide you with the Service, and you agree to pay, without any deduction, withholding or set-off whatsoever, to the Company the Charges. Payment must be made using the method specified by you when submitting your Order.

4.2 The Company shall be entitled to review the Charges on notice to you from time to time. In the event that any proposed increases to the Charges are not acceptable to you, you will have the right within seven (7) days of such notice from the Company to terminate this Agreement by one month's notice in writing stating the reason for the termination in accordance with the notice process set out in Clause 9.

4.3 The Company shall issue invoices to you at the email address specified in the Order, or such other address as notified to the Company by you from time to time, at the intervals set out in this Agreement. Payment shall be due on issue to you of an invoice unless otherwise specified in the Agreement ("Due Date").

4.4 Acting in good faith you shall notify the Company in writing of any disputed invoice amount within 10 days of the date of the invoice. If any undisputed amount payable by the Customer remains unpaid after the Due Date, then the Company shall be entitled to charge interest at the annual rate of 3% above the base lending rate from time to time of HSBC plc, accruing on a daily basis until payment is made, whether before or after any judgement.

4.5 You shall not be entitled to any reduction in the Charges in the event that you do not use all or any part of the Services.

4.6 All amounts payable by the Customer are exclusive of Value Added Tax and the Customer shall pay in addition any Value Added Tax applicable thereto from time to time.

5 Termination

5.1 Without prejudice to the rights and remedies of the Company and the Customer under this Agreement either party may terminate this Agreement forthwith in the event that:

5.1.1 the other party is in material breach of this Agreement (including any failure to pay any sum due hereunder) and (in the case of remediable breach) fails to remedy the breach within 28 days of receiving notice to that effect from the other party; or

5.1.2 either party becomes insolvent or has a receiving order made against it or commences to be wound up (not being a members voluntary winding up for the purpose of a solvent

reconstruction or amalgamation) or grants a trust deed on behalf of its creditors or any of them; or

5.1.3 the Company is no longer authorised to operate the Company System.

5.2 The Company may end this Agreement immediately upon written notice to you if:

5.2.1 it becomes unlawful for the Company or the Carrier supporting the Service to continue to provide the Service or the Company or the Carrier supporting the Service is required to cease the Service by a competent regulatory authority; or

5.2.2 the Carrier supporting the Service ceases to do so for whatever reason or materially changes the terms of its provision of telecommunications services to the Company for the Service beyond the reasonable control of the Company;

5.2.3 it transpires following the Agreement Date that, for any reason outwith the control of the Company, the Services will not be able to be provided to you. In the event of termination in accordance with this Clause 5.2.3, the Company shall repay to you any fees which you have paid in advance for the Services.

5.3 If this Agreement is terminated, prior to the end of the Initial Term for any reason, other than the fault or negligence of the Company or by the Customer pursuant to Clauses 4.2, 6.1, 6.8 or 11.4, the Customer shall forthwith pay to the Company all arrears of Charges at the date of termination and all rental and other charges payable under the Agreement for the remainder of the Initial Term (less any charges paid by the Customer prior to the date of termination in respect of a period falling after the date of termination). For the avoidance of doubt, in such circumstances the Charges which would have been incurred in relation to any Services still within their Initial Period if the Services had been provided for the entire Initial Period shall become due and payable.

5.4 Notwithstanding Clause 5.3 if any Service (or part of the Services) provided under this Agreement is ceased, prior to the end of the relevant Initial Period for any reason, other than the fault or negligence of the Company or by the Customer pursuant to Clauses 4.2, 6.1, 6.8 or 11.4, the Customer shall forthwith pay to the Company all arrears of Charges in respect of such ceased Services at the date of termination and all rental and other charges payable under the Agreement for the remainder of the Initial Period applicable to such Services (less any charges previously paid by the Customer in respect of a period falling after the date of termination).

5.5 Without prejudice to its other rights in terms of this Clause 8, the Company may, at its sole discretion elect to suspend provision of the Services forthwith until further notice if the Company is entitled to terminate or if you are otherwise in breach of the terms of this Agreement or if the Company is obliged to comply with any relevant order or instruction of the Government or other regulatory authority or if any wayleave or other consent required for the purposes of providing the Services is withdrawn, revoked or otherwise ceases to have effect. We reserve the right to take any action we deem appropriate and proportionate to the breach of this Agreement.

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5.6 You shall continue to be liable to pay the Charges during such suspension if the Service is suspended pursuant to your default.

5.7 You shall reimburse the Company in respect of all costs and expenses incurred in carrying out such suspension and re-commencing the provision of Services thereafter save where such suspension is required as a result of any breach of this Agreement by the Company.

5.8 Either party may terminate this Agreement at any time after the Initial Term by giving 30 days prior notice in writing of its intention so to do to the other party in accordance with the notice procedure detailed in Clause 9.

5.9 Your right to use the Service shall immediately terminate when this Agreement comes to an end.

5.10 On termination of this Agreement or suspension of the Services we shall be entitled immediately to block your Server or Virtual Server and to remove all data located on it. We shall be entitled to delete all such data but we may at our discretion hold such data for such period as we may decide, to allow you to collect it at your expense, subject to payment in full of any amounts outstanding and payable to us. We shall further be entitled to post such notice in respect of the non-availability of your Server or Virtual Server as we think fit.

6 Limitation on Liability

6.1 The Company's liability in contract, tort (or delict) or otherwise (including liability for negligence) under or in connection with this Agreement is limited to £5000 in respect of all claims arising in any consecutive period of 12 months.

6.2 Except as expressly set out in this Agreement, all warranties, conditions, undertakings or terms implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.

6.3 Nothing in this Agreement shall exclude or limit the liability of the Company for death or personal injury arising as a result of the Company's negligence or for fraudulent misrepresentation.

6.4 The Customer is solely responsible for any liability arising out of any content provided by the Customer and/or any material to which other users can link to through such content.

6.5 Any data included in the Equipment upon installation by the Company is for testing use only and the Company hereby disclaims any and all liability arising therefrom.

6.6 The Company shall not be liable to you in any circumstances for any loss of revenue, loss of profit, loss of use, loss of contract or loss of goodwill or any indirect or consequential loss including without prejudice to the generality of the foregoing loss or corruption of data transmitted over the Company System or otherwise arising out of or in connection with this Agreement.

6.7 Neither party shall be liable for any breach of this Agreement or any delay in performance of its obligations (other than the obligation to pay) to the extent that such breach is caused by circumstances beyond that party's reasonable control including Acts of God, fire, lightning, explosion, war, terrorism, disorder, flood, industrial disputes (whether or not involving their employees), extremely severe weather or acts of local or central Government or other competent authorities. If either party is affected by circumstances beyond its reasonable control, it shall notify the other party and shall use reasonable endeavours to overcome the effects.

6.8 If any of the events detailed in Clause 6.7 continue for more than 3 months either party may serve notice on the other terminating this Agreement without further liability.

6.9 The Customer shall indemnify and keep indemnified the Company against any or all claims and associated costs, damages or expenses made by any third party as a consequence of any act or omission of the Customer in relation to this Agreement or the Customer's use of the Service.

7 Data Protection

7.1 The Company may retain the personal data which the Customer submits when ordering the Service or which the Customer otherwise provides during the course of the Agreement and the Customer authorises the Company to use its personal data for the following purposes:

- 7.1.1 provision of the Service to the Customer, including without limitation disclosure to another Carrier to assist in provision of the Services;
- 7.1.2 keeping of a record for a reasonable period after termination of the Service;
- 7.1.3 operation and enforcement of the Agreement;
- 7.1.4 technical maintenance, and maintaining quality of the Service and also for the purpose of maintaining the quality and the integrity of the Company System, including the vidHandlr brand;
- 7.1.5 providing the Customer with information about other services the Company offers, subject to the right of the Customer to opt out of receiving such information at any point by notifying the Company in accordance with Clause 6;
- 7.1.6 transferring it to another company in the event of a sale of the Company; or
- 7.1.7 legal compliance including disclosing it to any third party who the Company reasonably consider has a legitimate interest in any such investigation or its outcome.

7.2 Without limitation, the Customer expressly authorises the Company to use the personal data of the Customer and other information in connection with any investigation into a suspected breach of this Agreement, including by disclosing it to any third party whom the Company considers has a legitimate interest in any such investigation or its outcome.

7.3 Both parties shall comply with applicable data protection legislation with respect to any personal data supplied in connection with the Service. Where applicable, the Customer shall inform its employees of the processing of personal data by the Company and shall ensure such employees have consented to such processing. The Customer warrants that all such personal data are accurate and complete.

7.4 You may be subject to a standard credit check. The information that you provide may be disclosed to a licensed credit reference agency (which will retain a record of the search) and you authorise the Company to make such disclosures.

8 Intellectual Property Rights

8.1 All title, interests, and rights (including Intellectual Property Rights) in the Service remain in the Company and/or its suppliers. You acknowledge such title, interest and rights and you shall not take any action to jeopardise, limit or interfere in any manner with the Company's (or any third party supplier's) title, interests or rights with respect to the Service including, but not limited to, using the Company's Intellectual property Rights.

8.2 Any IP or other network addresses allocated by the Company to you are for use only in connection with the Service and all rights in such addresses belong to the Company and shall revert to the Company upon termination of this Agreement. IP addresses are assigned in accordance with guidelines laid down by RIPE NCC. In order to comply with these guidelines, the Company will require you to explain and justify its usage of any IP address(es), before the Company is able to issue any IP address(es) to you.

8.3 You shall obtain any and all necessary consents and clearances to enable you lawfully to make use of all and any intellectual property rights through the Services, including without limitation, clearance and/or consents in respect of your proposed domain name.

8.4 Title and related rights in any content accessed through the Service are the property of the applicable content owner and are protected by applicable law. The Agreement does not give the Customer any interests or rights in such content.

8.5 We do not claim ownership, title or related rights over content stored on Company equipment by the customer.

9 Notices

9.1 Any notice required or permitted under this Agreement must be in English and in writing and sent either:

by post to: vidHandlr c/o Bashton Ltd, Newton House, Birchwood Park, Birchwood, Cheshire WA3 6FW; or

by email to: accounts@vidHandlr.com or to such other address or contact details as the Company may notify the Customer of from time to time.

9.2 Any notice to be sent to you will be sent to the email address which you provide when submitting your Order or to such other address as you shall have given written notice of as the billing address or to such other address or contact details as you may notify the Company of from time to time.

9.3 Such notices shall be deemed to have been received 3 Business Days after mailing if forwarded by mail, and the following Business Day if hand-delivered or when dispatched if sent by email provided that if any such notice, demand or other communication would otherwise be deemed to be given or made outside a Business Day, such notice, demand or other communication will be deemed to be given or made on the next Business Day.

10 Assignment

10.1 The Company reserves the right to assign or sub-contract any or all of its rights and obligations under this Agreement without your further consent to such assignment or sub-contract.

10.2 You may not sell, lease, sub-licence, assign or otherwise transfer, whether in whole or in part, by operation of law or otherwise, the Agreement or any rights or obligations therein without the prior written consent of the Company.

11 Entire Agreement and right to Amend

11.1 This Agreement and the documents referred to in it constitutes the entire agreement and understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party whether oral or written relating to the subject matter of the Agreement.

11.2 Each of the parties acknowledges and agrees that in entering into this agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in this agreement as a warranty. The only remedy available to it for breach of the warranties shall be for breach of contract under the terms of this agreement. Nothing in this sub-clause shall, however, operate to limit or exclude any liability for fraud.

11.3 The Company reserves the right to add to and/or amend the Conditions or any other aspect of this Agreement at any time. If we are going to make an amendment these Conditions we will notify you by sending you a letter or email advising you of the amendment thirty (30) days before the amendment is to take effect.

11.4 If the Company exercises its right to amend this Agreement in accordance with Clause 11.3, the Customer shall be entitled to terminate this Agreement by giving to the Company at least seven (7) days notice, provided that the amendment is (a) to the detriment of the Customer and (b) not an amendment made by the Company in response to a legal or regulatory change. The Customer's notice to terminate must be received by the Company before the amendment takes effect and must be provided in accordance with Clause 9. If the Customer does not exercise this right to terminate, the Customer is deemed to have accepted the amendment, whether or not the Customer continues to use the Service after the amendment takes effect.

11.5 If you ask the Company to make a change to the Agreement, including without limitation a change to the Conditions, the Company may ask you to confirm the request in writing. If the Company agrees to such a change, the Agreement will be amended from the date when the Company confirms the change in writing to you, unless otherwise agreed between the parties in writing.

12 No Waiver

12.1 Failure or delay by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

12.2 In the event that either party agrees to waive a breach of this Agreement by the other party, that waiver is limited to that particular breach.

13 Law and Arbitration

13.1 The Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

13.2 The parties shall use their reasonable endeavours to resolve any dispute arising under this

Agreement by direct negotiations between the parties. If any dispute is not resolved within 14 days through direct negotiation the parties will attempt to resolve the matter through the Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution. If the matter has not been resolved by an ADR procedure within 30 days, or if either party will not participate in an ADR procedure within such thirty day period, the dispute shall be referred to litigation in accordance with Clause 13.1. Notwithstanding the foregoing it is acknowledged and agreed that either party shall be entitled to seek injunctive relief in any court of competent jurisdiction if the other party is in breach of any of the terms hereof.

14 Rights of Third Parties

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

15 General Conditions

15.1 The rights and remedies provided by this Agreement exclude to the furthest extent permitted by applicable law all other rights and remedies (whether express or implied) provided by common law including negligence claims in tort or delict or statute in respect of the subject matter of this Agreement.

15.2 The termination or expiry of this Agreement shall be without prejudice to the rights of either party which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.

15.3 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision omitted.