



Terms and Conditions

LEGAL DOCUMENTATION

Exonetric Consulting Limited
57 Dapdune Road
Guildford
GU1 4NZ
United Kingdom

Date: May 31, 2006
Revision: 1.6

1 General Terms and Conditions

This Agreement is made between EXONETRIC CONSULTING LIMITED of 57 Dapdune Road, Guildford, GU1 4NZ, Surrey, and the Customer for the provision of Services as detailed in the Master Schedule all in accordance with the following General Terms and Conditions.

1. INTERPRETATION AND DEFINITIONS

- (a) In this Agreement the following terms shall have the respective meanings assigned to them (words in the plural include the singular and vice versa):
- i. "Agreement" means this agreement comprising the General Terms and Conditions, the Master Schedule, the AUP and the Service Description. In the event of any conflict between the terms of this Agreement, the provisions of the Service Description shall prevail;
 - ii. "AUP" means the Acceptable Use Policy which is hereby expressly incorporated by reference into this Agreement, the current copy of which may be found at <http://www.exonetric.com/legal/aup.html>;
 - iii. "the Customer" means the person, group of people, or company, who receive the Service from EXONETRIC CONSULTING LIMITED under the terms of this Agreement, as identified in the Master Schedule;
 - iv. "Commencement Date" means the date of commencement of the Service;
 - v. "EXONETRIC" means EXONETRIC CONSULTING LIMITED;
 - vi. "Fees" means the Subscription Fee and the Set Up Fee, together being the amounts payable by the Customer for provision of the Service as set out in the Master Schedule;
 - vii. "Force Majeure" means any circumstances beyond reasonable control including but not limited to Acts of God, fire, lightening, explosion, flood, extreme weather conditions, outbreak of hostilities (whether war be declared or not), riot, civil disorder or commotion, acts of terrorism, industrial disputes or acts or defaults of any local or central Government or other competent authority;
 - viii. "General Terms and Conditions" means these terms and conditions, forming part of the Agreement;
 - ix. "Master Schedule" means the master schedule appended to and forming part of this Agreement;
 - x. "the Service" means the Services to be provided by EXONETRIC CONSULTING LIMITED as specified in the Master Schedule;
 - xi. "Service Description" means a service description appended to and forming part of this Agreement;
 - xii. "Service Outage" means an interruption in the Service arising from either: a) a hardware failure on the Service itself or b) a failure on the underlying network facilities under the direct control of EXONETRIC UK LIMITED which are used to provide connectivity to the Service, and which is not caused directly or indirectly by a negligent act or omission of the Customer. Service Outage shall also not include any interruption resulting from scheduled or routine maintenance operations carried out by EXONETRIC CONSULTING LIMITED;
 - xiii. "Set Up Fee" means the amount payable by the Customer for initially setting up the Service;
 - xiv. "Subscription Fee" means the amount payable by the Customer for continued use of the Service;
 - xv. "EXONETRIC CONSULTING LIMITED Equipment" means any hardware, cabling, peripherals, software or any other equipment that EXONETRIC CONSULTING LIMITED shall provide the customer as part of its service. It shall specifically exclude equipment that has been sold outright to the customer.

2. PROVISION OF SERVICE

- (a) In consideration of the payment by the Customer of the Fees, EXONETRIC CONSULTING LIMITED shall provide the Services during the continuance of this Agreement subject to the compliance by the Customer with all the terms and obligations set out in this Agreement.
- (b) The Customer may request that the services and facilities comprised in the Services be altered. Any such request must be made in writing or by electronic mail and shall only take effect if agreed by EXONETRIC UK LIMITED.
- (c) Where the Service being provided requires, EXONETRIC CONSULTING LIMITED will liaise with the Internet IP numbering authorities to register a block of IP numbers for Customer use. These will only be available while the Customer maintains this Service with EXONETRIC CONSULTING LIMITED and may be subject to change or restrictions as decided by the numbering authorities.
- (d) Where the Service being provided requires, EXONETRIC CONSULTING LIMITED will liaise with the relevant domain administering facilities to register or transfer a domain name for Customer use. The Customer is responsible for ensuring that the domain has been registered accurately and for updating their contact details if their address changes. The Customer is fully responsible for administration and management of their domain name from the point of Termination of the Service.

3. TERM

- (a) The term of this Agreement shall commence on the Commencement Date and continue for the Initial Period set out in the Service Description (subject to the right of earlier termination by EXONETRIC CONSULTING LIMITED under Clause 7) and shall continue thereafter from year to year unless and until terminated by either party in accordance with the terms of this Agreement.

4. EXONETRIC CONSULTING LIMITED'S RIGHTS AND OBLIGATIONS

- (a) EXONETRIC CONSULTING LIMITED shall give instructions about use of the Service which EXONETRIC CONSULTING LIMITED thinks reasonable to be necessary in the interests of safety, or of concern to the quality of service to EXONETRIC CONSULTING LIMITED's other customers and any such instructions shall, whilst they are in force, be deemed to form part of this Agreement.
- (b) Subject as set out in Clause 2.(a), EXONETRIC CONSULTING LIMITED shall provide the Service on a 24 hour per day basis, 7 days a week but:-
 - i. access to the Service may be occasionally restricted to allow repairs, maintenance and archiving in which case EXONETRIC CONSULTING LIMITED will use all reasonable endeavours to provide the Customer with advance notice of such restriction;
 - ii. EXONETRIC CONSULTING LIMITED shall not be liable for any Service Outage other than as provided by Clause 6.(i);
 - iii. EXONETRIC CONSULTING LIMITED shall have the right to examine the use(s) to which the Service is put by the Customer and to disclose such use to third parties for legal or statutory purposes, in order to identify misuse or abuse of the Internet, or to ensure the smooth running of and identify faults in its network and the rest of the Internet; and
 - iv. EXONETRIC CONSULTING LIMITED shall have the right at any time and upon reasonable notice to send an engineer to the Customer's premises to undertake any necessary maintenance.

5. CUSTOMERS OBLIGATIONS

- (a) The Customer shall at all times use the Service in accordance with the AUP and shall indemnify and hold harmless EXONETRIC CONSULTING LIMITED from any losses incurred by reason of breach of this clause. In particular the Customer shall not, nor permit any other person to, use the Service:
 - i. to send or receive any material which is abusive, indecent, obscene, defamatory, racist, offensive, menacing or in breach of confidence, copyright or any other rights or which contains unlawful security devices or which contravenes any laws;
 - ii. to cause annoyance, inconvenience or needless anxiety;
 - iii. other than in accordance with the acceptable use policies of any connected networks including the Internet;
 - iv. to send unsolicited advertising or mailshots of any kind.
- (b) Unless otherwise specified in the Service Description the Customer is responsible for backup of its own files and EXONETRIC CONSULTING LIMITED does not offer recovery facilities as a service to the Customer.
- (c) This agreement is personal to the Customer and accordingly the Customer may not assign, transfer or "sublet" its rights under this Agreement or any part of the Service itself without the prior written consent of EXONETRIC CONSULTING LIMITED.
- (d) The Customer shall not resell or sublet the service. Examples of prohibited reselling or subletting include, but are not limited to: Internet Service Provision outside of the Customer's company or organisation, resale of bandwidth, internet connectivity or services provided by EXONETRIC CONSULTING LIMITED unless specifically authorised within the Service Description.
- (e) The Customer is solely responsible for obtaining the appropriate licences for, and undertaking the appropriate maintenance of, any software necessary for use of the Service, other than any software which may be provided by EXONETRIC CONSULTING LIMITED which the customer agrees to comply with any terms and conditions governing the use of the software.
- (f) In the event that software is provided by EXONETRIC CONSULTING LIMITED as part of the Service, EXONETRIC UK LIMITED hereby grants a personal, non-exclusive licence for the term of this Agreement to the Customer to use such software solely for the receipt of the Services under this Agreement.
- (g) Unless otherwise agreed in writing between the parties, the Customer is solely responsible for its own and any third party software, programs and data, the maintenance of the same and the output therefrom and for ensuring that such items are (if applicable) properly licensed, including being licensed for use by EXONETRIC UK LIMITED if necessary.

6. CHARGES FOR THE SERVICE

- (a) The Customer shall pay to EXONETRIC CONSULTING LIMITED Fees relating to the Service on the basis specified in the Master Schedule.
- (b) EXONETRIC CONSULTING LIMITED may alter the amount of the Fees or of any of its charges at any time after the initial period and shall notify the Customer in writing of any alteration (either increase or decrease) and such change shall take effect from the date specified in such notification which shall not be less than 30 days after the giving of such notice.
- (c) The Fees are not refundable, except where otherwise stated herein. Fees paid in advance at a discounted rate are also not refundable if the Customer Terminates the Service before they have been fully used.
- (d) Fees are exclusive of value added tax which shall be paid by the Customer unless otherwise stated.

- (e) Fees do not include charges for any communications service used to connect the Customer to the Service unless otherwise stated.
- (f) Additional charges may be made at EXONETRIC CONSULTING LIMITED's current standard consultancy rates for advanced support, custom programming or configuration, or software installation.
- (g) EXONETRIC CONSULTING LIMITED may at its discretion charge interest on any amounts due from the Customer under this Agreement which are not paid within 30 days of invoice at the rate of 8 percent above Bank of England base rate for the time being calculated from the date of the invoice to the date actual payment is received as per the Late Payment of Commercial Debts (Interest) Act 1998.
- (h) Customer-owned equipment will only be returned when all outstanding amounts have been paid. Customer-owned equipment will only be retained for a period of 3 months, at which time such equipment shall be sold to offset as much of the outstanding debt as possible.
- (i) Cheques and direct debits returned unpaid by the Customer's bank may incur an administration charge which in any event shall be paid by the Customer.
- (j) In no event shall EXONETRIC CONSULTING LIMITED incur liability for Service Outage unless:
 - i. A written claim is made within 60 days of the Service Outage giving rise to such credit, and;
 - ii. The ability to claim a Service Outage credit has been included in the Service Description. In any event such Service Outage credit shall not exceed the corresponding monthly Subscription Fee for the period of the Outage, and shall only be due from the period starting when the Customer contacted EXONETRIC UK LIMITED to alert them to the problem.
- (k) EXONETRIC CONSULTING LIMITED reserves the right at any time to require the Customer to issue a deposit or other form of security acceptable to EXONETRIC CONSULTING LIMITED if: a) Customer's financial circumstances or payment history is or becomes unacceptable to EXONETRIC CONSULTING LIMITED; b) there is a material change in the circumstances or Customer's actual or anticipated usage. Upon receipt of a written request for security the Customer shall have five (5) business days to provide such security and if Customer fails to comply with such request within said period then EXONETRIC CONSULTING LIMITED shall be authorised to immediately suspend the delivery of Services and / or terminate this agreement without further notice.
- (l) EXONETRIC CONSULTING LIMITED reserve the right to require customers to enhance or upgrade their bandwidth or level of service or associated cover in the event that the services herein become inappropriate or insufficient to meet the customers existing or future growth requirements and which in the opinion of EXONETRIC UK LIMITED requires a different service more appropriate to the Customer's usage pattern or needs. The customer will be liable for the higher charges and costs associated with the upgraded service.

7. TERMINATION AND SUSPENSION OF SERVICE

- (a) If the Customer:
 - i. fails to pay any Fees or related charges;
 - ii. shall cease to carry on business or become insolvent, or have an administrator or receiver appointed or enter into liquidation or enter into any agreement with its creditors;

- iii. fails to fulfil any of its obligations under any part of this or any other agreement that it has with EXONETRIC CONSULTING LIMITED or interferes with or impairs the Service, or EXONETRIC CONSULTING LIMITED's ability to perform the Services; then EXONETRIC CONSULTING LIMITED may (without prejudice to any other right or remedy):
 - iv. suspend provision of the Service until the Customer shall remedy such matter but the Customer shall continue to be liable for any of the charges and Fees which may accrue during such suspension; and/or
 - v. after giving written notice, terminate the Agreement between the Customer and EXONETRIC UK LIMITED forthwith in which case any unused portion of the Fee will not be returned; and/or
 - vi. refuse access by the Customer to any Customer and/or EXONETRIC CONSULTING LIMITED equipment at EXONETRIC CONSULTING LIMITED's premises.
- (b) EXONETRIC CONSULTING LIMITED may terminate the Customer's access to the whole or any part of its Services at any time by providing not less than the Appropriate Written Notice Period and returning the unused portion of the Subscription Fees.
- (c) The Customer may terminate the Service by providing not less than the Appropriate Written Notice Period as specified in the Service Description, which notice may be given at any time but which may only take effect on or after the expiry of the Initial Period.
- (d) Upon termination of this Agreement, however brought about, the Customer shall remain liable for all outstanding obligations and Fees and this Agreement shall continue to cover any material sent or received by the Customer for as long as it remains on the Service.
- (e) For the avoidance of doubt, any licences granted by EXONETRIC CONSULTING LIMITED under this Agreement shall terminate upon the termination or expiry of this Agreement.

8. LIMITATION OF LIABILITY

- (a) Nothing in this Agreement shall exclude or restrict either party's liability for death or personal injury resulting from its negligence or that of its employees while acting in the course of their employment.
- (b) Subject to Clause 9.(a), the Customer acknowledges that
- i. EXONETRIC CONSULTING LIMITED has no control over the information transmitted to or from the Service and that EXONETRIC CONSULTING LIMITED does not ordinarily examine the use to which customers put the Service or the nature of the information they are sending or receiving. EXONETRIC CONSULTING LIMITED hereby excludes all liability of any kind for the transmission or reception of information
 - ii. EXONETRIC CONSULTING LIMITED shall not in any circumstances be liable under this Agreement or otherwise for any direct or indirect loss, loss of business, revenue, profits or savings; wasted expenditure; corruption or destruction of data; or for any indirect or consequential loss whatever whether arising from negligence, breach of contract or otherwise.
 - iii. in any event EXONETRIC CONSULTING LIMITED's liability in contract, tort or otherwise (including negligence) howsoever arising out of or in connection with this Agreement shall in respect of any one or more incidents not exceed the total Fees received by EXONETRIC CONSULTING LIMITED in the calendar year in which the incident occurs.
- (c) The Customer shall indemnify EXONETRIC CONSULTING LIMITED against any claims, legal proceeding and expenses (including legal fees), arising from the Customer's use

of the Service which are brought or threatened against EXONETRIC CONSULTING LIMITED by another person or company.

- (d) In the event of any part of this Agreement being held inapplicable or unreasonable, the remainder of the Agreement shall remain in full force and any clause held inapplicable or unreasonable shall be enforced to the fullest extent possible.
- (e) The provisions of this Clause 8 shall continue to apply notwithstanding the termination or expiry of this Agreement.

9. SERVICE OF NOTICE

- (a) Any written document shall be deemed to be given or served by EXONETRIC CONSULTING LIMITED on the day following that on which it is emailed to the Customer's internet electronic mail account, or posted to, or left at, the address given by the Customer for receiving bills.
- (b) Any information published on the service, including changes to Fees or charges, shall be deemed to be given or served by EXONETRIC CONSULTING LIMITED on the day that it is published and such change shall take effect on the expiry of the Appropriate Written Notice period.

10. FORCE MAJEURE

- (a) Neither EXONETRIC CONSULTING LIMITED nor the Customer shall be liable for any breach of this Agreement caused or substantially contributed to by Force Majeure.

11. LAW

- (a) These General Terms and Conditions are subject to the laws of England and Wales and the Customer hereby submits to the jurisdiction of the English Courts.
- (b) The Master Schedule, these General Terms and Conditions, the AUP and any Appendix contain the entire Agreement between the parties with respect to the Service, and supersedes all previous agreements and understandings between the parties, and may not be modified save as provided herein.
- (c) The Customer acknowledges that, in entering into this Agreement, it does not rely on any representation (other than any fraudulent misrepresentation), warranty or other provision except as expressly provided in this Agreement, and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- (d) The Customer shall observe the requirements of the Data Protection Acts 1984 and 1998 regarding any personal data related to EXONETRIC CONSULTING LIMITED's employees, customers and agents that comes into its possession and shall indemnify EXONETRIC CONSULTING LIMITED against any claims related to the Data Protection Acts which result from the negligence of the Customer or its employees.
- (e) The Customer and EXONETRIC CONSULTING LIMITED shall not for a period beginning on the Commencement Date until six (6) months after the termination date directly or indirectly solicit or seek to procure (otherwise than by general advertising) the employment of any employee of the other party.
- (f) The Customer shall ensure that EXONETRIC CONSULTING LIMITED and all persons authorised by EXONETRIC UK LIMITED will have reasonable access to the Customer's premises and equipment to enable EXONETRIC UK LIMITED to carry out its obligations under this Agreement, and will ensure that EXONETRIC CONSULTING LIMITED has access to such facilities and is given such co-operation at the Customer's premises as EXONETRIC UK LIMITED shall reasonably request.

- (g) The Customer will grant or procure all permissions, licences, waivers, registrations and approvals necessary or reasonably considered desirable by EXONETRIC CONSULTING LIMITED to deliver, install, keep installed and maintain at the Customer's premises any EXONETRIC CONSULTING LIMITED equipment.
- (h) The customer hereby agrees that EXONETRIC CONSULTING LIMITED may refer to the customer, by company or trading name, and to the existence of this Agreement in any marketing or promotional materials.

12. YEAR 2000

- (a) EXONETRIC CONSULTING LIMITED has a long standing year 2000 programme seeking to resolve any problems caused by the year 2000 issue and is confident that any impact upon normal services will be negligible. However, for the avoidance of doubt, EXONETRIC CONSULTING LIMITED makes no warranty or representation that the Services or any aspect of them, are year 2000 compliant.

13. CHANGE OF GENERAL TERMS AND CONDITIONS

- (a) EXONETRIC CONSULTING LIMITED may at any time, and with immediate effect, modify the AUP;
- (b) EXONETRIC CONSULTING LIMITED may modify the Agreement where it is required to do so, by notifying the Customer in writing and giving 30 days notice where possible. This would include where changes to the law, rules applied by Internet authorities and collaborative Internet bodies require EXONETRIC CONSULTING LIMITED to modify its procedures, policies or services.
- (c) EXONETRIC CONSULTING LIMITED may at any time modify the Agreement by notifying the Customer in accordance with clause 9.

14. RESPONSIBILITY FOR ON SITE EQUIPMENT ON CUSTOMER'S PREMISES

- (a) The Customer shall at its own expense provide reasonable assistance and facilities to EXONETRIC UK LIMITED in the installation of EXONETRIC CONSULTING LIMITED equipment, any electricity required for the proper functioning of EXONETRIC CONSULTING LIMITED equipment and shall provide or procure suitable accommodation, facilities and environmental conditions for housing the EXONETRIC CONSULTING LIMITED equipment and all necessary electrical and other installations and fittings. The Customer will use all reasonable endeavours to effect such preparation and provision at its sole cost before such EXONETRIC CONSULTING LIMITED equipment is installed at the Customer's premises.
- (b) The Customer shall be responsible for EXONETRIC CONSULTING LIMITED equipment on the Customer's premises and shall not add to, modify or in any way interfere with the EXONETRIC CONSULTING LIMITED equipment. The Customer shall be liable to EXONETRIC CONSULTING LIMITED for and shall insure (under an all risks policy) against any and all loss of damage to EXONETRIC CONSULTING LIMITED equipment howsoever occasioned or caused, except in so far as any such loss or damage is attributable to the negligent or wilful act or omission of EXONETRIC UK LIMITED, its agents or subcontractors.
- (c) Unless otherwise provided in the Contract, ownership (both legal and beneficial) of EXONETRIC UK LIMITED equipment shall be retained by EXONETRIC CONSULTING LIMITED at all times and the Customer will not remove or alter in any way any identification mark on any part of the EXONETRIC CONSULTING LIMITED equipment showing that it is owned by EXONETRIC CONSULTING LIMITED. On all occasions when the ownership of the EXONETRIC CONSULTING LIMITED equipment is relevant, the Customer shall make clear to third parties that the same is the property of EXONETRIC CONSULTING LIMITED.

- (d) Upon termination of the Agreement, the Customer shall, at its own expense, return within five business days any EXONETRIC CONSULTING LIMITED equipment to EXONETRIC CONSULTING LIMITED.