



## TERMS AND CONDITIONS OF SALE OF INTERSCOT NETWORK LTD

### 1 DEFINITIONS

- (1) "Buyer" means the person and/or organisation who purchases Services from the Supplier;
- (2) "Consumer" shall have the meaning ascribed in Section 12 of the Unfair Contract Terms Act 1977;
- (3) "Contract" means the contract between the Supplier and the Buyer for the provision of Services incorporating these Terms and Conditions;
- (4) "Intellectual Property Rights" means any patent, trademark, service mark, registered design, copyright, design right, any contact or database rights, know-how, confidential information or process, any application for any of the above, and any other intellectual property right recognised in any part of the world, whether or not presently existing or applied for, which are held by the owning party;
- (5) "Proposal" means the document describing the services to be provided by the Supplier as confirmed by e-mail to the Buyer.
- (6) "Services" means the hosting services that the Buyer agrees to buy from the Supplier as specified in the Proposal;
- (7) "Supplier" means InterScot Network Ltd, 272 Bath Street, Glasgow, G2 4JR, United Kingdom which is a registered company in Scotland (SC209567).
- (8) "Terms and Conditions" means these Terms and Conditions, but will also include any special terms and conditions agreed in writing by the Supplier;
- (9) "Working days" means any Monday to Friday from 9am to 5pm excluding all public and bank holidays in Scotland.
- (10) "Content" means text, graphics, logos, photographs, images, moving images, sound, illustrations, software and other material and related documentation featured, displayed or used in or in relation to the Website

### 2 CONDITIONS

- (1) These Terms and Conditions apply to all contracts for the sale and provision of Services by the Supplier to the Buyer and will prevail over any other agreement, documentation or communication whatsoever between the parties.
- (2) Nothing in these Terms and Conditions is intended to affect a Buyer's statutory rights as a Consumer.
- (3) These Terms and Conditions can only be varied if agreed between the parties in writing.
- (4) Any special conditions which apply will be set out in the Proposal.
- (5) Any complaints by the Buyer must be in writing to the Supplier's address stated in Clause 1(7)
- (6) The Buyer is not entitled to withhold any payment of the price, or part thereof from the Supplier. Any complaints or queries by the Buyer, including any snagging lists, must be in writing to the Supplier's address stated in the Proposal.

### 3 THE SERVICES

- (1) Details of the Services which the Supplier will supply to the Buyer are contained within the Proposal. Quotes will be valid for a period of 28 days. Any samples, drawings, specification, product details in any format or any form of advertising material are shown by

the Supplier to provide some indication of the Services and are not part of the agreement unless specifically stated within the Proposal.

(2) When the Buyer places an Order with the supplier ("the Order") they will be deemed to have accepted the Proposal and these Terms and Conditions.

(3) The agreement between the Supplier and the Buyer, incorporating these Terms and Conditions, shall only come into force when the Supplier confirms an Order to the Buyer. Prior to any confirmation the Supplier has the right to refuse any Order.

#### **4 PRICE AND PAYMENT**

(1) The Price of the Services is as shown on the Proposal. Any additional Services to be supplied will be agreed in writing between the Buyer and the Supplier and will be subject to additional charges.

(2) Payment must be made in accordance with the Proposal.

(3) Where payment or any part payment is overdue (such as if there are problems with the payment method or payment does not clear for any reason or is not made on time), then the Supplier will immediately cease or suspend the provision of any Services until full cleared payment is received by the Supplier.

(4) The Supplier will charge interest on overdue payment at the rate of 2.48% per month and is also entitled to recover all reasonable expenses incurred in obtaining payment from the Buyer where any payment or part payment due to the Supplier is late.

#### **5 BUYER'S OBLIGATIONS**

(1) To enable the Supplier to provide the Services, the Buyer will at all times:

(a) co-operate with the Supplier and provide any documents, information and/or materials, support and facilities required, and within a reasonable time of such a request from the Supplier. The Buyer specifically agrees to deliver to the Supplier the Website and the software used in the Website (which is owned by the Buyer, or licensed to him by a third party or the Supplier), in a format specified by the Supplier.

(b) obtain all and any licences, permission, consents and anything similar prior to the supply of the Services. Unless specified within the Proposal, the costs of meeting this will be the responsibility of and will be paid directly by the Buyer.

(c) ensure and agree that anything passed to the Supplier has been checked by the Buyer as being accurate, suitable for the use the Buyer requires, is proof-read, is final and requires no further amendment and does not breach any copyright, intellectual property or the rights of any third party, whatsoever in nature, is not contrary to any law and is virus-free and functions satisfactorily and will be provided by the Buyer in the format the Supplier specifies

(d) comply with all statutes and statutory regulations applicable to the Services.

(2) The Buyer will also comply with the Proposal and all and any Special terms contained within that Proposal.

(3) The Buyer agrees that the Supplier has a non-exclusive, worldwide, and royalty-free sub-licensable licence for the whole of any term, including any renewal term, if applicable, to copy edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use the Buyer content as necessary solely for the purposes of rendering and operating the Supplier's services to the Buyer. For the avoidance of doubt, this does not transfer or grant to the Supplier any right, title, interest or intellectual property rights in Content supplied to the Supplier by the Buyer.

(4) Prior to the Services starting, the Buyer will obtain the approvals, licences and permissions and authority as detailed in the Proposal to enable the Supplier to carry out the Services and where required will provide evidence of such to the Supplier. However, where

applicable, by placing an Order the Buyer undertakes that they have the authority of any owners of relevant equipment and/or premises where the Services are to be performed.

(5) Use of the Internet and websites are designed for computers which meet certain specifications as to hardware, including servers and software. It is the Buyer's responsibility to ensure that any equipment used by the Buyer meets the Supplier's minimum criteria for this. Consultancy advice can be provided to the Buyer at the Buyer's request as to the specifications. The Supplier will advise the Buyer at the time of the Buyer's request whether any additional charge will be made for the provision of this advice.

(6) The Buyer agrees to fully test anything which the Supplier reasonably requires.

(7) It will always remain the Buyer's responsibility to retain, as applicable, up to date copies and back-ups of any information and/or data and content in connection with the Buyer's website once the services have been completed by the Supplier and it is not the Supplier's responsibility to retain any copies or back-up. The Supplier can not accept any responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because copies have not been made and/or data and/or content is not/has not been backed up.

**(8) Bandwidth, Data-Transfer And Storage**

(a) The Buyer agrees to all bandwidth, data-transfer volume restrictions and storage restrictions as applicable and as detailed on the Proposal and agrees that the Buyer will be responsible for payment if the Buyer exceeds the limits.

(b) For security purposes direct access to the servers is not permitted and any direct updates or changes must be done through the Supplier.

(c) The Buyer agrees to regularly check all e-mail accounts and download anything stored. Where capacity is exceeded in any e-mail, it may simply be returned to the recipient. Where e-mails have not been checked and the mailbox maintained for a period of 2 months then the Supplier reserves the right to suspend the service without notice.

(d) The Buyer agrees that the Buyer will not undertake any action that will in any way cause a disproportionate level of website activity without giving the Supplier 14 days prior written notice

(9) The Buyer will indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Buyer's breach of any of its obligations under the agreement, including any claims brought against the Supplier alleging that any Services manufactured/designed according to the Buyer's specification and provided by the Supplier in accordance with the Proposal infringe any rights whatsoever of any third party.

**6 SUPPLIER'S OBLIGATIONS FOR DELIVERY & PERFORMANCE OF SERVICES**

(1) The Supplier will supply Services in accordance with the description of such Services contained within the Proposal. Time limits provided are estimates only.

(2) (a) The Supplier will perform the Services with reasonable skill and care and to a reasonable standard in accordance with recognised standards and codes of practice. However, whilst the Supplier will use its reasonable endeavours to supply the services, the Supplier shall not be responsible for any failure to provide services or any unavailability. In particular, the Supplier cannot guarantee that access to a website or any other services will be uninterrupted, secure or error-free. The Supplier is not responsible for any events, such as crashes, which may result in content and data loss.

(b) For Hosting services the Supplier will use their reasonable endeavours to make the server and the Services available to the Customer for the percentage of Uptime as detailed in the Proposal (if any). However, because of the nature of such Services, the Supplier makes no warranties or representations that the Service will be uninterrupted or error-free and the Supplier shall not, in any event, be liable for interruptions of Service or downtime (service interruption in the availability to visitors of the Website)

(3) The Supplier makes no warranty against electronic virus, worms or any other fault or defect or problems which may occur or as a result thereof, including data, materials, documents or any e-mail the Supplier sends.

(4) (a) With hosting services, the Supplier will maintain control and ownership of the internet protocol (IP) address that is assigned to the Customer as part of the Services

(b) the Supplier reserves the right, in their sole discretion, to change or remove any and all IP addresses. However, should this occur then the Supplier will use their reasonable endeavours to avoid any disruption to the Buyer.

(6) (a) The level of Support, including any applicable technical support, if any, is detailed in the Proposal.

(b) Unless provided otherwise within the Proposal any alterations can be made by the Buyer using the online account management facility.

(c) Fault Response Times, if any, are detailed in the Proposal. The Supplier will in their sole discretion determine what constitutes a major problem and what constitutes a minor problem

(7) (a) Some features of the Supplier's services will be based on software, items and/or services provided by third parties. The Buyer acknowledges that they have entered into a separate agreement with the relevant third party and specifically agrees that the Supplier can not be responsible for any faults, failures, errors, or issues relating to the operation of third party software nor the availability of updates and upgrades

(b) It is the Buyer's responsibility to adhere to any agreement that is in force pertinent to the hardware, software or any other item in the form of a user agreement. By entering into any agreement with the Supplier, the Buyer is also confirming that the Buyer has read and agrees to adhere to such user agreements, including any fee payment, and that the Buyer understands that there is an agreement directly between the Buyer and the third parties.

(8) The Supplier reserves the right to suspend the services and to substitute any person within the Supplier's organisation, and sub-contract as and where the Supplier, in their sole discretion, determine.

(9) The Buyer is always responsible for anything which the Buyer submits to the Supplier including, but not limited to data, information, materials or documents, any content or anything else whatsoever and the Supplier advises that the Buyer maintains adequate insurance both in transit and whilst in the Supplier's care. The Supplier always advises that the Buyer retains, as applicable, copies/back-up of anything which is submitted to the Supplier. The Supplier can not be responsible for the destruction or damage of any item whatsoever which the Buyer submits to the Supplier, including replacement, re-shooting, reprinting, copying nor any losses whatsoever which occur as a result thereof.

(10) If the Supplier has specifically agreed on any Proposal to supply any report or documentation, they will be in whatever format and contain the information that the Supplier, in their absolute discretion, deems appropriate.

(11) The Supplier shall be entitled to procure the services of any other persons and/or organisations with suitable skills and experience as are necessary from time to time in order to provide the Services.

(12) Except as expressly stated in these terms and agreement or those statutory warranties which apply to consumers, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Services to be provided by the Supplier.

## **7      RESPONSIBILITY AND USE**

(1) The Buyer agrees to be solely responsible for the use of any Services supplied and that they will use the Services legally and only for the purposes that such Services are intended to be used for and at all times in accordance with any applicable intellectual property rights,

instructions, advice, suggestion, guidance, licence and information. This includes ensuring that the Buyer reads all the information and guidance supplied by the Supplier, takes any required precautions and/or tests before use and fully understands what the services comprise of. Where the Buyer fails to take such care and precautions and care advised by the Supplier, then the Buyer will be responsible for all and any damages or losses incurred because of the Buyer's failure to take such action, precautions and care.

(2) Furthermore the Buyer agrees that they:-

(a) are always responsible for their website, including all content. For the avoidance of doubt, the Supplier is not obliged to monitor, and will have no liability for, the content of any communications transmitted by virtue of any Services.

(b) will not misuse any Services supplied and will abide by any laws applicable to any Services supplied.

(c) are solely responsible for maintaining the confidentiality of any username and password supplied and for all use and activities in relation to the Services. The Buyer also confirms that they will notify the Supplier immediately of any unauthorised use, or any other known or suspected breach of security and also use reasonable efforts to immediately stop any misuse that is known or suspected by the Buyer

(d) will comply with the Supplier's Acceptable Use Policy as detailed at Schedule 1.

(3) It is the Buyer's responsibility to ensure that the Services are suitable for the Buyer's own use.

(4) The Buyer specifically accepts that the effectiveness of any Services will also be dependent on correct and effective use, storage, inspection and periodic routine maintenance.

(5) The Buyer specifically agrees that the Supplier has no liability and furthermore that the Buyer will indemnify the Supplier for any losses or expenses incurred whatsoever resulting from any breach of this Clause.

## **8 CONFIDENTIALITY & DATA PROTECTION**

(1) Both the Supplier and the Buyer agree that the specifications, documentation and information obtained from each other or about each other during the provision of the Services are confidential.

(2) Both parties agree that they will not disclose to any third party, whether by themselves directly or indirectly, by act or omission, or through any other company, firm or person, or otherwise procure, cause or facilitate the disclosure of any confidential information or trade secrets belonging to the other party save as agreed by both parties or as required by law or Court Order.

(3) Data will be held according to current applicable Data Protection legislation subsisting in Scotland.

## **9 INTELLECTUAL PROPERTY RIGHTS**

(1) Upon cleared payment of all amounts due to the Supplier from the Buyer, the Buyer is assigned the rights to use the Services. All Intellectual Property remains the Supplier's property. Unless the Buyer has the Supplier's specific written agreement, which is usually contained on the Proposal, ownership of anything the Supplier provides during the services does not pass to the Buyer. The Buyer specifically agrees not to do anything that may in any way infringe upon or undermine the Supplier's rights, title, or interests. This includes, but is not limited to, any licence, sale, transfer or gift of the whole or of any part of any item, data or anything whatsoever that the Supplier owns. The Buyer fully understands that the Supplier may reproduce, re-use, develop and use in any other way the Supplier chooses, anything within the Supplier's ownership.

(2) No such rights as described in (1) above will pass until the cleared payment of all amounts due to the Supplier from the Buyer. This means that the Supplier will have a lien over any data or materials. If all payments due from the Buyer have not been paid and cleared in full within 2 months from the date of the invoice the Buyer agrees that the Buyer will forfeit the Buyer's rights.

(3) Rights to photographs, graphics and any third party items, always remain the property of their respective owners.

(4) If any items relating to the Supplier's services, including any data, information and any materials supplied by the Buyer, prints and original files are not collected after 3 months from the date the Supplier completes the work then the Supplier reserves the right to dispose of such data, information and materials.

## **10 CANCELLATIONS AND TERMINATION**

(1) If the Services do not comply with the Proposal or are faulty, then the Buyer should notify the Supplier in writing within 14 days of such non-compliance or fault. The Supplier will, at their sole discretion, then rectify the problem or provide the Buyer with a refund. However, if the Buyer has not paid in full for the Services or the Buyer has not complied with their obligations then the Supplier is under no obligation to rectify any defect in respect of this clause.

(2) In view of the nature of the services provided, if the Supplier accepts an electronic order is accepted, then the Buyer waives any cancellation or refund rights under the Consumer Protection (Distance Selling) Regulations 2000, particularly Regulation 13, unless agreed otherwise in writing.

(3) If one party commits a material breach of the agreement and either:

(a) the breach is not capable of being remedied, or,  
(b) where it is capable of being remedied, the breach has not been remedied within 30 days of written notice of the breach by the party who has not committed the breach, then the party who has not committed the breach may terminate the agreement forthwith by written notice to the other party.

(4) Other than as provided for in this Clause, either party may terminate the agreement (as regards some or all of the Services) at any time for any reason by giving to the other 30 days' written notice. Any payment which is due for Services supplied up to the date of termination remains payable. Any payment already made for Services supplied up to the date of termination is non-refundable.

(5) The agreement will automatically terminate if either party, as applicable, passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect, ceases to carry on its business or substantially the whole of its business or is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

## **11 LIMITATION OF LIABILITY**

(1) Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the negligence of the Supplier or their employees or agents.

(2) The Supplier shall never be liable for any indirect, incidental or consequential loss or damage, including any economic loss or loss of profit or business whatsoever suffered by the Buyer or any third party howsoever caused, including as a result of any negligence, breach of contract, misrepresentation or otherwise.

(3) Time limits provided are estimates only and time shall not be of the essence and the Supplier shall incur no liability to the Buyer in respect of any failure to complete the Services by any agreed completion date.

(4) Other than those implied by law where the Buyer is dealing as a Consumer, in the event of the Supplier breaching any of these Terms and Conditions the Buyer's remedies are limited to damages which in no circumstance whatsoever will exceed the price of the Services.

## **12 INDEMNITY**

The Buyer will indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Buyer's breach of any of its obligations under the agreement, including any claims brought against the Supplier alleging that Services manufactured/designed according to the Buyer's specification and provided by the Supplier in accordance with the Proposal infringes any rights whatsoever of any third party.

## **13 WAIVER**

Nothing in these Terms and Conditions and no express or implied waiver by the Supplier in enforcing any of its rights under any contract shall prejudice its rights to do so in the future.

## **14 FORCE MAJEURE**

The Supplier shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to, acts of God, accidents, war, fire, strikes, lock outs, failure of any communications including telecommunications or computer systems, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Supplier shall be entitled to a reasonable extension of its obligations.

## **15 NOTICES**

(1) Any Notices for either party must be sent by e-mail or to the address which appears on the Proposal.

(2) Unless the contrary is proved, Notices sent by e-mail will be deemed to be received on the day it was sent.

(3) Notices being served by post must be served using Royal Mail Special Delivery or other guarantee services and will be deemed to have been received on the date that Royal Mail obtains a record of receipt from or on behalf of the addressee.

## **16 INVALIDITY AND SEVERANCE**

Each clause or any part at all of these terms and agreement is to be regarded as independent of the others. This means that should any clause or any part at all of the agreement be found to be unenforceable or invalid it will be severed and will not affect the enforceability or validity of the rest of the agreement.

## **17 GOVERNING LAW AND JURISDICTION**

These Terms and Conditions and agreement shall be interpreted, construed and enforced in accordance with Scottish law and shall be subject to the exclusive jurisdiction of the Scottish Courts.

## **SCHEDULE 1** **ACCEPTABLE USE POLICY**

The Services must always be used lawfully and the Buyer specifically agrees not to submit, display or publish any content or anything whatsoever illegal. In addition to the Terms and Conditions the Buyer agrees not to do or allow the following:-

- (1) make available or upload or otherwise use any corrupt data or harmful component, including but not limited to, virus, worm, Trojan horse, time bomb or any such code that could destroy and/or contaminate.
- (2) Use in particular material or content which the Supplier, in their sole discretion, deem to be unacceptable, harmful, illegal or offensive; any infringement of intellectual rights and copyright; nor use the Services for illegal purposes such as fraud or in any other crime.
- (3) will not have any content nor publish, post, distribute or disseminate anything which is, or could be perceived to be, defamatory, libellous, discriminatory (in any form), malicious, violent, offensive, pornographic, against public decency, exploiting, cruel, malevolent, nor abusive, offensive or obscene in either language or content nor incite such behaviour
- (4) send any email or any type of electronic message with the intention or result of affecting the performance of any computer facilities
- (5) threaten, abuse, disrupt, harass or violate or invade the rights and/or privacy of any individual or organisation,
- (6) obtain or attempt to obtain access, through whatever means, to areas of the Supplier's network or the Services which are identified as restricted or confidential
- (7) engage in illegal or unlawful activities through or via the Services or the Web
- (8) anything which reflects unfavourably on the goodwill and reputation of us, the Website, any of our associates, advertisers or other users.