

## 1. INTERPRETATION

1.1. In these terms and conditions the following terms have the following meanings:

"Charges": the Usage Charges and other charges for the Service as specified in the Order or as otherwise notified to Customer from time to time;

"Customer": the party purchasing the Services as named in the Order;

"Domain name": any name and appropriate classification and or geographic locator registered with an appropriate domain registry and converted to an Internet Address by means of a Domain Name Server (DNS);

"Internet Address": such sequence of alpha numeric or numeric only characters as are used from time to time by Customer to identify itself or its computer or computers to other users of other computers to which Futuretel is from time to time connecting or otherwise forwarding data to and from Customer;

"Initial Period": 12 months (or such other minimum period as is set out in the Order) from the date the Order is signed by Customer;

"Network": the telecommunications network operated by a Network Operator;

"Network Operator": a network operator who operates a communications network to which a line is connected in accordance with an agreement between the network operator and Futuretel;

"Order": the order attached to these Terms containing details of the Services and charges;

"Site": the place at which Futuretel agrees to provide the Services;

"Services": the provision of data network services using Transmission Control Protocol/Internet Protocol as more particularly described [where?][and any services that Futuretel agrees to provide to Customer under the Contract];

"Futuretel Equipment": any communications or other equipment owned by Futuretel or its licensors that the Supplier uses to provide the Services. This may include modem and router cables. This does not include leads, batteries or other accessories or equipment Customer might purchase from any supplier Futuretel recommends or any alternative supplier;

"Term": the period from the commencement of the Contract until terminated in accordance with the Contract;

"Usage Charge": such charges for such predetermined unit of time and/or volume of data as may be specified in [the Order][OR Futuretel's published tariffs][OR as otherwise agreed in writing by Futuretel];

1.2. Any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. Any words following the terms including, include or any similar expression is illustrative and does not limit the sense of the words or term preceding those terms. Headings in these Terms shall not affect interpretation

## 2. APPLICATION OF TERMS

2.1. These Terms shall apply to and be incorporated in the Contract and prevail over any inconsistent terms or conditions contained in, or referred to in, Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2. [The execution of the Order by Customer and Futuretel shall establish a contract for the Futuretel and purchase of those Services on these Terms] (Contract).

## 3. TERM

3.1. The Contract will commence on signature by both parties and shall continue unless terminated in accordance with clause 12, for a period of [12] months (or such other minimum period as is set out in the Order) from the date the Order is executed (Initial Period). The term of the Contract shall automatically be extended for 12 months (Extended Period) at the end of the Initial Period and at the end of each Extended Period, unless terminated in accordance with clause 10.

## 4. PROVIDING THE SERVICE

4.1. During the Term Futuretel shall [use reasonable endeavours] to provide the Services to Customer in accordance in all material respects with the Contract.

4.2. Any performance dates specified in the Contract and Order shall be estimates only. Time shall not be of the essence of the Contract.

4.3. Futuretel may require that a survey of the Site is carried out before the commencement of the Services.

4.4. Futuretel may without liability to Customer: (i) change or withdraw some, or part, of the Services; and (ii) determine or change how the Services are presented and delivered or are otherwise made available to Customer at any time.

4.5. Customer understands and accepts that: (i) Futuretel cannot guarantee that the Services will be available without interruption or will be free from error; (ii) the Services have not been developed to meet their individual requirements and that it is therefore Customer's responsibility to ensure that the facilities and functions of the Services meets their requirements; (iii) Futuretel relies upon the Network Operator's co-operation in providing the Services. Futuretel therefore gives no warranty, representation or undertaking as to the speed, quality or availability of the Services.

4.6. Customer shall report any fault to Futuretel's Customer Services Department, where it will be dealt with in accordance with the agreed fault repair service. Futuretel reserves the right to charge Customer for any other work carried out at its applicable man-hour rate.

4.7. If Customer reports a fault and Futuretel finds that there is none, or that Customer has caused the fault, Futuretel has no obligation to repair the fault and may charge Customer for any work undertaken to discern the report fault.

4.8. Futuretel may restrict or block any internet traffic to or from a Customer service if Customer fails to comply with its obligations concerning use of the Service under clause 7.

## 5. ACCESS TO AND PREPARING THE SITE

5.1. Customer shall at its own cost prepare the Sites in accordance with Futuretel's instructions and reinstate them at Customer's expense after Futuretel has completed any work necessary for Futuretel to be able to provide the Services.

5.2. Customer shall provide in a timely manner without charge such access to the Site as Futuretel or the Network Operator may reasonably require for the purposes of the Services.

## 6. CUSTOMER'S OBLIGATIONS

6.1. Customer understands and accepts that the provision of the Services is subject to all relevant licences, infrastructure (or interconnect arrangements) and consents being in place. Customer shall obtain any consent or facility that is necessary or desirable for Futuretel to provide the Services at the Site.

6.2. Customer hereby agrees to the termination of its existing contract for equivalent services with the applicable communications service provider. Customer shall provide Futuretel with any relevant account and calling line identification numbers that may be required by the Network Operator. Customer acknowledges that Futuretel cannot process the provisions of the Services until such information is provided by Customer.

6.3. Customer warrants that any information supplied by Customer to Futuretel under the contract is complete and accurate in all respects.

6.4. Customer shall provide a suitable and safe working environment for Futuretel or the Network Operator and anyone acting on their behalf, at the Site.

6.5. Customer agrees to provide, at its expense, a suitable place and conditions for Futuretel Equipment and where required a continuous mains electricity Futuretel and connection points.

## 7. CUSTOMER'S USE OF THE SERVICE

7.1. [Customer may not resell or commercially exploit any of the Services without the prior written consent of the Company.]

7.2. Customer shall not utilise and shall ensure that no other person uses the Service: (i) for storing, reproducing, transmitting, communicating or receiving any material in breach of any law, regulation, code of practice or Futuretel's acceptable use policy; or (ii) fraudulently or for any unlawful or illegal purpose; or (iii) to send offensive, obscene, indecent, menacing, abusive, nuisance, "spam" or hoax messages; or (iv) to cause an annoyance, inconvenience or needless anxiety to any person.

7.3. Customer shall ensure that its employees, keep any password for the Service(s) confidential and not divulge the password(s) to any third parties.

7.4. Customer must not announce by any means any Internet Addresses allocated by or on behalf of Futuretel to Customer as part of an autonomous system unless the addresses originate from inside Company's network and Customer has obtained permission from Futuretel to operate an autonomous system.

7.5. Customer shall comply with Futuretel's instructions given from time to time concerning the use of the Services.

7.6. Customer shall not exceed any usage limits placed on it by Futuretel from time to time concerning its use of the Service.

7.7. Customer shall keep all of Futuretel's Equipment at the Site safe and shall pay for the replacement and/or repair of any of Futuretel's Equipment which is lost, damaged (otherwise than by fair wear and tear) or destroyed by an act or omission of Customer, its employees, agents or subcontractors. Customer shall not alter or move any of Futuretel's Equipment, or do anything that is likely to damage or adversely affect its performance, or remove or deface any words or signs on it, or permit anyone else to do so or use such equipment for any purpose other than accessing the Service.

7.8. Customer shall indemnify and keep indemnified Futuretel against all or any claims and associated costs, damages or expenses made by any third party as a consequence of any breach by or other act or omission of Customer under or in relation to the Contract.

## 8. CHARGES AND DEPOSITS

8.1. The Charges for the Service are as shown on the front of the Contract. Time for payment shall be of the essence of the Contract.

8.2. The Charges will be calculated using the data recorded or logged by (or on behalf of) Futuretel and not data recorded or logged by Customer.

8.3. Customer shall pay all Charges whether Customer or someone else uses the Services. Futuretel shall not and shall not be under any obligation (express or implied) to monitor Customer's usage and/or patterns of usage of the Service.

8.4. Unless otherwise agreed in writing by Futuretel Usage Charges will be invoiced monthly in advance.

8.5. Customer shall pay each invoice submitted to it by Futuretel in full, and in cleared funds (without set-off or deduction), within 10 days of the date of the invoice.

8.6. [All [Usage Charges][OR Charges] must be paid by direct debit.] Any other form of payment must be agreed in writing by Futuretel and may be subject to additional charges.

8.7. The Charges are exclusive of VAT or any other sales tax which shall be payable in addition to the Charges at the applicable rate from time to time.

8.8. Without prejudice to any other right or remedy that Futuretel may have, if Customer fails to pay Futuretel on the due date, Futuretel may: (i) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and (ii) suspend all Services until payment has been made in full.

8.9. The Charges shall continue to be payable during any period of suspension or restriction requested by Customer in addition to any Charges for such suspension or restriction.

8.10. Futuretel will consider billing queries from Customer only if such queries are made in writing within 90 days of the date of the applicable Futuretel invoice in respect of charges in connection with the use of the Services.

## 9. SUSPENSION AND VARIATION OF THE SERVICES

9.1. Futuretel may, in its sole discretion suspend or vary the Services without liability to Customer if: (i) Futuretel is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the any government or regulatory body or otherwise comply with any relevant law or regulation or direction from a competent authority; (ii) Futuretel reasonably suspects or believes that Customer is in breach of the Contract; (iii) Futuretel reasonably suspects or believes that any of the events specified in clauses 12.3 or 12.4 have occurred; (iv) Futuretel and/or its Network Operator needs to modify, expand, improve, maintain or repair the Services.

9.2. Customer shall reimburse Futuretel for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Services where suspension or variation is implemented as a result of any act or omission of Customer.

9.3. [If any Network Operator shall discontinue the provision of communications services to Futuretel or shall alter by modification, expansion, improvement, maintenance or repair the communications services or any part of them provided to Supply shall disconnect Customer's apparatus from the PSTN, PDN or Internet, Futuretel shall be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise change the Services as necessary.]

## 10. TERMINATION

10.1. Customer may terminate the Contract by giving a minimum of 90 days prior written notice to Futuretel, such notice to expire on the expiry date of the initial period or the relevant Extended Period, as the case may be.

## 10.2.

10.3. Futuretel may immediately terminate the Contract by written notice to Customer, if: (i) Customer commits a breach of any term of the Contract; or (ii) Customer ceases trading or is unable to pay its debts as they fall due or a petition is presented or meeting convened for her purpose of winding Customer up or Customer entered into liquidation or bankruptcy, whether compulsorily or voluntarily, or compounds with its creditors generally or has a received appointed over all or any part of its assets.

10.4. The rights to terminate the Contract given by this Clause 10 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

10.5. On termination of the Contract the Services shall immediately cease and: (i) Customer shall immediately cease to use and return to Futuretel any Internet Addresses allocated by Futuretel to Customer; [(ii) Futuretel reserves the right to invalidate Customer's User Name and Internet Address;] (iii) Except in the case of manifest error, no Charges will be refunded to Customer; (iv) Customer shall promptly and at its own cost return to Futuretel all Futuretel Equipment and other material belonging to Futuretel.

## 11. DOMAIN NAMES

11.1. Domain name hosting and transfer requests for DNS records must be in writing with the authorised signature of the domain owner. There is no charge for the transfer, but a small charge may be made for administration.

11.2. [Unless a Domain name has been previously registered and paid for in full by Customer, Domain names shall remain the property of Futuretel and will not be transferred to Customer (or any third party nominee) until all outstanding Charges have been paid by Customer.]

## 12. LIMITATIONS AND EXCLUSIONS OF LIABILITY

12.1. This Clause 12 sets out Futuretel's entire liability (including any liability for acts or omissions of Futuretel's employees, agents or subcontractors) in respect of any breach of the Contract and any representation, statement or tortious act or omission arising out of or in connection with the Contract.

12.2. Except as set out in these Terms, Futuretel provides no warranties, conditions or guarantees as to the description or quality of the Services, and all warranties, conditions or guarantees 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.

12.3. Subject to Clause 12.5, Futuretel's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall not exceed [to be discussed].

12.4. Subject to Clause 12.5, Futuretel shall not be liable to Customer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise the Contract, for: (i) loss of profits; (ii) loss of revenue; (iii) loss of income or business; (iv) depletion or loss of goodwill, reputation or similar losses; (v) loss of anticipated savings; (v) loss of use; (vi) loss of data; (vii) loss of contract; or (viii) any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.

12.5. Nothing in these Terms shall exclude or limit the liability of Futuretel for: (i) death or personal injury resulting from Futuretel's negligence; or (ii) for fraud or fraudulent misrepresentation; or (iii) for any matter which it would be unlawful for Futuretel to exclude or limit its liability.

12.6. Subject to clause 12.5 Futuretel shall not be liable for any delay or failure to provide the Service caused by (i) any act or omission of the Customer which is relative to its obligations under the Contract; (ii) any failures of any third parties to provide equipment, software, materials or information required to perform the Services; (iii) down time of the telecommunications network caused by suppliers of third party communications and other computer services provided that (and to the extent that) the same is not due to any act, omission or default of Futuretel, its employees, agents or sub-contractors.

12.7. The provisions of this Clause 12 shall survive termination or expiry of the Contract.

## 13. CONFIDENTIALITY

13.1. All confidential information disclosed by either party to the other in connection with the performance of the Contract, except such information as may be generally available to the public, shall be agreed to have been disclosed in confidence and each party is obliged to keep any such information as it may acquire confidential and, save to the extent required by law or by any governmental or other authority or regulatory body, not to disclose it to any other person or otherwise improperly use it either before or after the termination of the Contract except insofar as such information has entered the public domain otherwise than in breach of this clause.

## 14. GENERAL

14.1. Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 14 days' written notice to the other party. This Clause does not apply to Customer's obligation to pay the Charges.

14.2. Any notice to be given under the Contract shall be in writing addressed to the other party at its registered office or such other address as may have been notified to the other party.

14.3. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.4. Failure or delay by Futuretel in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

14.5. If any provisions of the Contract (or part of a provision) are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

14.6. It is acknowledged and agreed that the Contract (including the documents and instruments referred to herein) (Documents) shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation or representation was made fraudulently. No representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

14.7. Nothing in the Contract shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.

14.8. No one other than a party to the Contract, shall have any right to enforce any of its terms.

14.9. Futuretel may assign or transfer any of its rights and obligations under the Contract. Customer may not transfer, assign, sub-licence or subcontract any rights, licences or obligations under the Contract without the prior written consent of Futuretel

14.10. English law shall govern the validity, construction and performance of the Contract and the Parties submit to the exclusive jurisdiction of the English Courts.