

These terms and conditions ("the Conditions") govern the provision of the Services, as defined below. The Services are supplied by THUS plc, (Company Number SC192666) whose registered office is 1-2 Berkeley Square, 99 Berkeley Street, Glasgow G3 7HR ("the Company"), under the brand name of Demon.

MailDefender

Terms and Conditions

1 DEFINITIONS

1.1 In this Agreement, the following terms have the following meanings:

"**Agreement**" means these Conditions, Order Form and/or the Welcome Email and the THUS Acceptable Use Policy;

"**Agreement Date**" means the last date of signature of this Agreement;

"**Authorised User**" means, in relation to C-Billing, the individual(s) appointed by the Customer as responsible for the payment of the Company's online invoices and as granted access rights to the Customer's C-Billing;

"**C-Billing**" means the online data access services provided, at the discretion of the Company, to the Customer to enable the Customer to access via the Internet the Customer's current and accumulated twelve (12) months of historic invoices, as derived from financial systems, and providing electronic billing facilities;

"**Charges**" means any of the charges payable by the Customer for the provision of the Services pursuant to this Agreement;

"**Company System**" means the telecommunications system operated by the Company in accordance with the General Conditions; and

"**Customer**" means the person named as the Customer in the Agreement;

"**Customer Premises**" means the premises of the Customer specified in the Agreement;

"**Demon**" means the brand of THUS utilised by the Company in the provision of certain of its products and services;

"**Email**" means any electronic message generated by an End User scanned by the Service generally in a business to business environment over the world wide web generally understood as the Internet;

"**End Users**" means the ultimate end user of the Service as permitted under a contract for the provision of the Service between the Company and the specific Customer responsible for those End-Users;

"**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;

"**Initial Period**" means the initial period in respect of each Service provided under this Agreement which shall be no less than 12 months from the relevant Service Commencement Date;

"**Internet**" means, in relation to C-Billing, the interconnected system of networks that connects computers around the world through an established protocol enabling the transmission and exchange of electronic information and data;

"**Known Viruses**" means Viruses that have been listed on the anti-virus web site 'Sophos' <http://www.sophos.com> for at least eight minutes prior to the time of scanning;

"**LoginID**" means, in relation to C-Billing, the login identity allocated to each Authorised User by the Company;

"**Service Commencement Date**" means the date (or dates) the Company advises the Customer the Services are available;

"**Services**" means the services to be provided by the Company as set out in the Agreement and as may be amended from time to time pursuant to Clause 1.4.2 and Service shall be construed accordingly;

"**Software**" means the anti-Virus and anti-Spam software licensed to and used by the Company in connection with the Service from time to time;

"**Spam**" means unsolicited commercial email or bulk email in which the recipient's personal identity and the content are irrelevant as the message is equally applicable to multiple recipients, or the recipient has not granted deliberate, explicit, and still-revocable permission for it to be sent, or the transmission and receipt of the message appears to the recipient to give a disproportionate benefit to the sender;

"**Virus**" means a piece of code usually (but not necessarily) disguised as something else that causes some unexpected and, for the victim, usually undesirable event which is designed so that it may automatically spread to other computer users; the term "**Virus**" shall also be deemed to include reference to worms, Trojan horses and other nuisance causing or otherwise harmful applets.

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 bye-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 These Conditions, together with the Company's Acceptable Use Policy ("**AUP**"), explain our responsibilities to you and your responsibilities to the Company and to other End-Users. The AUP in particular outlines what we consider to be unacceptable use of the Internet by our customers so that we can take appropriate steps against abusers of the Internet. All references to "**Agreement**" include references to the Conditions, Order Form and/or the Welcome Email and the THUS Acceptable Use Policy found at: <http://www.demon.net/helpdesk/producthelp/aup/thusaup>.

If there is anything you do not understand, please phone us via our Customer Service Department on 0845 271 0666 between 8.00am and 8.00pm Monday to Saturday inclusive, or email us at: customerservice@demon.net.

2 DURATION

2.1 This Agreement shall come into effect on the Agreement Date and shall continue in full force and effect for the Initial Period and thereafter until terminated in accordance with this Agreement.

2.2 The Services shall come into effect on the Service Commencement Date, or such later date as may be notified by the Company subject to the Customer obtaining (at its own expense) any consents, approvals, servitudes, rights of way necessary for the provision of the Services to the Customer.

2.3 In the event that the Company agrees to provide new or additional Services or change the Services under this Agreement a new initial period may apply to each new, additional services from the new service commencement date as advised by the Company.

3 CHARGES

3.1 The Customer shall pay, without any deduction, withholding or set-off whatsoever, to the Company the Charges (other than any Disputed Charges) set out in the Agreement.

3.2 The Company shall be entitled to review the Charges on two (2) months notice to the Customer from time to time. Other than in the event of cancellation pursuant to Clause 1.2, in the event that any proposed increases to the Charges are not acceptable to the Customer the Customer will have the right within thirty (30) days of such notice from the Company to terminate this Agreement by one month's notice in writing to the Company.

3.3 The Company shall render invoices to the Customer at the intervals as set out in this Agreement. The Company, at its discretion, shall issue invoices to the Customer at the billing address specified on the front sheet of this Agreement or other such address as notified by the Customer from time to time or make invoices available to the Customer on C-Billing. Payment shall be due within thirty (30) days of the invoice date or as otherwise specified in the Agreement ("**the Due Date**").

3.4 The Customer acting in good faith shall notify the Company in writing of any disputed Charges within 10 days of the date of the invoice ("**Disputed Charges**") containing such disputed Charges. If any undisputed Charges payable by the Customer remain unpaid after the Due Date, then the Company shall be entitled to charge interest (whether before or after judgement) at the annual rate of 3% above the base lending rate of The Royal Bank of Scotland plc for the time being until payment of such amount and all accrued interest in full.

3.5 The Customer shall not be entitled to any reduction in the Charges in the event that it does not use all or any part of the Services.

3.6 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.

3.7 If the Company carries out work in response to a fault in the Service reported by the Customer and following such work the Company determines that (1) there is no fault found in the Service or (2) the fault was due to an act or omission of the Customer, then the Company shall be entitled to charge the Customer for any such work carried out.

3.8 Save in the case of demonstrable error all Charges shall be calculated in accordance with data recorded or logged by, or on behalf of the Company.

4 SERVICES

- 4.1 The Company shall provide the Services to the Customer in accordance with this Agreement and with the reasonable skill and care of a competent telecommunications and Internet service provider. To use the Service you need to supply the Company with certain details when you submit your order. The Company will comply with applicable data protection legislation in respect of it.
- 4.2 The Company shall use its reasonable endeavours to provide the Service by the Service Commencement Date.
- 4.3 The Company will filter Known Viruses and will filter Spam from the Customer's inbound Email. If the Customer so elects, the Company will scan the Customer's outbound Email for Known Viruses that are sent by the Customer inadvertently. The Company cannot guarantee protection of the Services against unauthorised interruption or interception by third parties or that any of the Services shall be error free or uninterrupted. No anti-Virus software can guarantee a 100% detection rate and, therefore, the Company cannot accept any responsibility whatsoever for any Viruses sent or received by you. Please refer to Clauses 4.9 and 9 below and the Company's exclusion/limitation of liability in this regard.
- 4.4 The Customer shall be required to comply with all laws, directions, codes or regulations relevant to the use of the Services.
- 4.5 The Company will use reasonable endeavours to maintain and update the Software as soon as the Company's licensors make any appropriate upgrade or enhancement to the Software.
- 4.6 The Customer is responsible for the content of all Emails including attachments the Company scans on the Customer's behalf and the Customer will indemnify the Company against all actions, claims, expenses and liabilities of every description arising either directly or indirectly from the provision of the Service to the Customer including, without limitation, all such losses, costs, charges and expenses suffered or incurred by the Company in disputing any claim, action, liability, demand or proceedings which may arise directly or indirectly in relation to the Service. The maximum size of any single Email is 35Mb.
- 4.7 The Company recognises and confirms that the content of all emails scanned on the Customer's behalf by the Software is confidential and the Company will use its reasonable endeavours to keep confidential information received by it from the Customer or for the Customer in connection with the Service. However, the Company reserves the right to disclose such information (to the extent the Company considers reasonably necessary) for the purposes of:
- (a) maintaining and improving the performance and the integrity of the Software and the Company System;
 - (b) observing, studying and/or testing the functionality of the Service;
 - (c) complying with all regulatory, legislative or contractual requirements; and
 - (d) making available to the Company's licensors of the Software any information passing through the Company System which may be of interest to the Company's licensors solely for the purpose of further developing and enhancing the Software and the Company reserves the right to retain copies of the information entering the Company System as may be necessary from time to time for such purposes.
- 4.8 Virus infected Emails which are stored on the quarantine server, will be deleted after a period of 21 days. Should the Customer require the Company to transmit a Virus infected Email to the Customer from the holding pen, this will be done at the Customer's risk and the Company will take no responsibility whatsoever for any loss, corruption or failure of any data or systems. The Company will under no circumstances knowingly transmit Virus infected Emails to third parties on the Customer's behalf.
- 4.9 It is the inherent nature of Viruses that they are developed faster than the software developed to curb them. Therefore, the Company does not warrant, represent or guarantee in any way whatsoever that the Software will ensure that no Viruses are contained in Emails sent by or to the Customer.
- 4.10 The Customer shall ensure that the Services are not used:
- (a) to send a message or communication which is offensive, abusive, indecent, obscene or menacing; or
 - (b) to cause annoyance, inconvenience or needless anxiety; or
 - (c) in breach of any reasonable or lawful instructions provided by the Company from time to time.
 - (d) in breach of the Acceptable Use Policy.
- 4.11 The Customer will supply the Company with all technical data and all other information the Company may reasonably request from time to time to allow the Company to supply the Service to the Customer. All information supplied by the Customer will be complete, accurate and given in good faith. The Customer hereby authorises the Company to make all necessary changes to the Customer's DNS records for the purpose of making the Service available to the Customer.
- 4.12 The Customer recognises that information sent to and from the Customer will pass through the Company's System and accordingly the Customer agrees that it will:
- (a) comply with all relevant legislation applicable to use of the Internet;
 - (b) conform to the protocols and standards published on the Internet from time to time and adopted by the majority of Internet users; and
 - (c) indemnify the Company against any liability to third parties resulting from information passed through the Company System to or from the Customer.
- 4.13 Customers may be required by the Company to purchase additional End User licences to maintain an average monthly inbound email volume below the equivalent of 20Mb per licensed End User. This is calculated across the entire user base so that a high volume End-User can safely use the spare capacity of a low volume End User.
- 4.14 In addition to the Company's termination rights set out in Clause 10 below, the Company may at any time and at the Company's sole option, suspend the Service until the Customer gives suitable undertakings and security in terms satisfactory to the Company to comply with the Customer's obligations hereunder or terminate the Service if the Customer is in breach of any of its obligations set out above.
- 4.15 The Company will use its reasonable endeavours to maintain the Service. The Service is subject to change from time to time. If any part of the Service through no fault on the Company's part cannot be used by the Customer, or where a failure, suspension or withdrawal of all or part of the Service is beyond the Company's reasonable control, compensation will not be payable. Should all of the Service be unavailable for any other reason for a period of 24 consecutive hours or more and during that time the Company was unable to provide suitable alternative services, we will extend the period for which you have paid free of charge for the same number of part or full day(s) that the Service remains unavailable.
- 4.16 The Company shall investigate any suspected or alleged breach of the Agreement or any suspected compromise to our network systems or security, and in doing so the Company will act reasonably and fairly at all times.

- 4.17 The Company reserves the right to take any action we deem appropriate and proportionate to the breach of the Agreement.
- 4.18 If the Company decides that you have breached the Agreement, we will use reasonable endeavours to ensure that you are made aware of the breach without suspension or cancellation of the Service. However, it may be necessary due to the severity of the breach to suspend or cancel the Service whilst details of the breach are investigated further. We reserve the right to suspend or cancel your Account at our sole discretion without refund, and make an additional charge for all reasonable costs incurred due to investigating and dealing with the misuse and/or blocking access to any component(s) of the Service.
- 4.19 Without limitation, you expressly authorise us to use your personal data and other Account information in connection with any investigation in terms of Clauses 4.17 and 4.18, including by disclosing it to any third party whom we consider has a legitimate interest in any such investigation or its outcome.

In addition, you expressly agree that the personal data and Account information may be used by the Company for the purpose of maintaining the quality and the integrity of the Company's network, including the Demon brand.

5 DATA PROTECTION

- 5.1 The Company may retain, and use, your personal data for the following purposes:
- (a) provision of the Service to you;
 - (b) keeping a record for a reasonable period after termination of your Service;
 - (c) operation and enforcement of the Agreement;
 - (d) technical maintenance, and maintaining quality of the Service; and also for the purpose of maintaining the quality and the integrity of the Company's network, including the Demon brand;
 - (e) providing you with information about other services the Company offers, subject to your right to opt out of receiving such information;
 - (f) transferring it to another company in the event of a sale of the Company; or
 - (g) legal compliance.

6 ACCESS CONDITIONS

- 6.1 This Agreement does not include the provision of telecommunication services necessary for connection to the Service. You are responsible for making a separate application for the appropriate service and for complying with the conditions applicable to it.

7 NOTICES

- 7.1 All notices required to be given by one party to the other shall be deemed sufficiently given when forwarded by prepaid registered mail, by facsimile or hand delivered to the other party's registered address or other address or facsimile number as either party notifies to the other.
- 7.2 Such notices shall be deemed to have been received 3 business days after mailing if forwarded by mail, and the following business day if forwarded by facsimile, or hand-delivered.
- 7.3 Unresolved complaints, and settlement of disputes in respect of the Agreement, will follow our escalation procedure as set out in the THUS plc Code of Practice, a copy of which can be viewed at: <http://www.demon.net/static-content/product-brochures/codeofpractice.pdf>.

8 INFORMATION

- 8.1 On request by the Company, the Customer shall provide the Company with any information the Company reasonably requires in order to provide the Services.

9 LIABILITY

- 9.1 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 either £5,000 (five thousand pounds) or an amount equal to six months of Charges, whichever is the greater in respect of all claims arising in any 12 month period.
- 9.2 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.
- 9.3 The Company shall not be liable to the Customer 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 (including but not limited to loss of software, data or emails).
- And for the purposes of this Clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.
- 9.4 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, 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.
- 9.5 If any of the events detailed in Clause 9.4 continue for more than 3 months (or as may otherwise be agreed between the parties) either party may serve notice on the other terminating this Agreement without further liability.
- 9.6 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.
- 9.7 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.
- 9.8 The Company shall not be liable for failure to meet the Service Commencement Dates or any provisioning lead times given by the Company to the Customer.

10 TERMINATION AND SUSPENSION

- 10.1 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:
- 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
 - 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
 - the Company is no longer authorised to operate the Company System.
- 10.2 If this Agreement is terminated, prior to the end of the Initial Period for any reason, other than the fault or negligence of the Company or by the Customer pursuant to Clause 3.2, the Customer shall forthwith pay to the Company all arrears of Charges at the date of termination and 100% of the charges payable under the Agreement for the remainder of the Initial Period (less any charges paid by the Customer prior to the date of termination in respect of a period falling after the date of termination).
- 10.3 Notwithstanding Clause 10.2 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 Clause 3.2, the Customer shall forthwith pay to the Company all arrears of Charges in respect of such ceased Services at the date of termination and 100% of the charges payable under the Agreement for the remainder of the Initial Period (less any charges previously paid by the Customer in respect of a period falling after the date of termination).
- 10.4 Without prejudice to its other rights in terms of this Clause 10, the Company may at its sole discretion elect to suspend provision of the Services forthwith until further notice if it is entitled to terminate or if the Customer is otherwise in breach of the terms of this Agreement or if the Company is obliged to comply with any relevant order or instruction of 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.
- 10.5 The Customer shall continue to be liable pay the Charges during such suspension if the Service is suspended pursuant to the Customer's default.
- 10.6 The Customer shall reimburse the Company in respect of all costs and expenses incurred in carrying out such suspension and re-commencing of the provision of the Services thereafter save where such suspension is required as a result of any breach of this Agreement by the Company.
- 10.7 Either party may terminate this Agreement at any time after the Initial Period by giving one months notice in writing of its intention so to do to the other party.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 The intellectual property rights in the Software and any other software the Company uses in connection with the Service is and will at all times remain the Company's property or that of the Company's licensors. Nothing in this Agreement shall transfer ownership or any aspect of ownership in these rights to the Customer.

12 CANCELLATION

- 12.1 The Service may be cancelled prior to the Service Commencement Date by the serving of written notice:
- by the Customer subject to the Company being entitled to charge the Customer for any abortive work done or costs incurred by the Company in installing and provisioning of the Services;
 - by the Company pursuant to Clause 9.5.

13 ASSIGNATION

- 13.1 The Company shall be entitled to assign or sub-contract the whole or any part of its rights and obligations under this Agreement.

14 ENTIRE AGREEMENT

- 14.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and other than in relation to any fraudulent misrepresentations supersedes all other agreements and representations made by either party whether oral or written.
- 14.2 Any amendment to this Agreement (e.g. the provision by the Company of additional Services) shall be in writing referring to this Agreement and signed by a duly authorised representative of each party.

15 NO WAIVER

- 15.1 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.
- 15.2 In the event either party agrees to waive a breach of this Agreement by the other party, that waiver is limited to that particular breach.

16 C-BILLING

- 16.1 The Customer's Authorised User will be allocated an individual LoginID and password by the Company to enable access to C-Billing.
- 16.2 The Authorised User shall not share use of C-Billing or any part of it with any other person including, if the Authorised User is a company, any person who is an officer of or contracted to the company, whether directly or indirectly, other than in accordance with these Conditions.
- 16.3 The Authorised User must not operate C-Billing in a way that does not comply with these Conditions or with any legislation or applicable licence or that is in any way unlawful or fraudulent, or to its knowledge has any unlawful or fraudulent purpose or effect, or in connection with the carrying out of a fraud or criminal offence against any telecoms operator, or in a way that does not comply with the reasonable instructions given by the Company, or operate or attempt to operate C-Billing in any way that modifies, decompiles or reconfigures the facility or any software or hardware, or copy any manual or documentation relating to C-Billing, without the prior written consent of the Company.
- 16.4 The Authorised User shall maintain the security of its allocated LoginID and password and will not disclose such to any third party for any purpose other than in accordance with these Conditions. The Authorised User shall immediately notify the Company and change any password which may have been compromised, or is reasonably believed to have been so compromised.
- 16.5 The Company shall not be liable in contract, tort (or delict) pre-contract or other representations (other than fraudulent or negligent representations) or otherwise arising out of or in connection with C-Billing for any special, indirect or consequential loss or any destruction or loss of data, in any case, whether or not such losses were within the contemplation of the Customer at the Agreement Date, suffered or incurred by the Customer arising out of or in connection with these Conditions or C-Billing.
- 16.6 Without prejudice to its rights and remedies, the Company may terminate C-Billing, or any part of it, forthwith in the event that the Customer or the Authorised User is in material breach of these Conditions, becomes insolvent or has a receiving order made against it or commences to be wound up or grants a trust deed on behalf of its creditors or if the Company is no longer authorised to operate the Company System.
- 16.7 Without prejudice to its rights and remedies, the Company may at its sole discretion elect to suspend provision of C-Billing forthwith until further notice if it is entitled to terminate it or if the Customer or the Authorised User is in breach of these Conditions or if the Company is obliged to comply with any relevant order or instruction of government or other regulatory authority or if any consent or authority required for the purpose of providing C-Billing is withdrawn, revoked or otherwise ceases to have effect.

17 LAW AND ARBITRATION

- 17.1 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.
- 17.2 The parties shall use their reasonable endeavours to resolve any dispute arising under this Agreement by direct negotiations between the parties. If the 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 17.1. 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.

18 RIGHTS OF THIRD PARTIES

- 18.1 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.

19 GENERAL

- 19.1 The rights and remedies provided by this Agreement are exclusive and not cumulative and exclude 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.
- 19.2 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.