



Updated July 2020. These terms and conditions shall apply to the agreement between Firstserv Limited ("Firstserv") and the individual or company applying for the provision of services by Firstserv ("the Customer").

**IT IS HEREBY AGREED as follows:**

## **Section A – General Terms and Conditions**

### **1. DEFINITIONS**

**A.1.1** The definitions in this clause A1 apply except where an alternative definition is given in an applicable section of the Special Terms and Conditions in which case the definition in the Special Terms and Conditions shall take precedence:

“Acceptable Use Policy” means Firstserv’s current policy for appropriate use of the Firstserv Website and the Services, as published on the Firstserv Website at the relevant time.

“Additional Charges” means charges calculated by Firstserv on a time and materials basis at its then prevailing rates for providing Additional Services.

“Additional Services” means a Service not specified as included within the Service Order.

“Agreement” means the contract between Firstserv and The Customer for the provision of Services, comprising the Statement of Work (if any), the Service Order, the Special Terms and Conditions, these General Terms and Conditions and the Sales Quotation.

“Commencement Date” means the start date for the provision of Services as stated in the Service Order.

“Default” means any material breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other.

“Effective Date” means the date of this Agreement, as specified in the Service Order.

“Equipment” means the computing hardware from or upon or in relation to which the Services are to be performed.

“Firstserv Website” means the website located at <http://www.firstserv.com> or such other internet address as may be adopted or used by Firstserv from time to time.

“Hours of Cover” means the times, detailed in the Service Order to a Service Schedule, that Firstserv will provide Services.

“Inappropriate Materials” means Material that under the laws of any jurisdiction where the material can be accessed is or may be any of the following: unlawful, threatening, abusive, harmful, obscene, pornographic, malicious, profane, libellous, defamatory, infringing of any Intellectual Property Rights, constituting or encouraging a criminal offence or containing a virus, worm, Trojan horse or other harmful code or corrupt data, spam or unsolicited commercial emails and any other material defined as Inappropriate Material in the Acceptable Use Policy.

“Intellectual Property Rights” means patents, trademarks, service marks, designs, design rights, copyright (including all copyright in any designs and computer software and any databases), database rights, inventions,



trade secrets, know-how, confidential information, registrable business names and all other intellectual property rights and rights of a similar character in any part of the world (whether or not the same are registered or capable of registration) and all applications and rights to apply for protection of any of the same.

“Material” means text, graphics, images, sound, video or any combination thereof.

“Personnel” means any engineer or consultant provided by Firstserv, whether an employee or subcontractor of Firstserv to perform Services on behalf of Firstserv.

“Place of Use” means the location at and from which the Equipment is installed and operated and all access (either physical or remote) required to that part.

“Product” means the Equipment, software and/ or Services set out on a Service Order, Statement of Work or Sales Quotation.

“Product Description” means the latest product or service description, either in a Service Order, Statement of Work or Sales Quotation.

“Sales Quotation” means a document, including a page on the Firstserv Website, detailing the prices of Product(s) and/or Services that Firstserv provide to customers.

“Services” means the work referred to in a Service Order or a Statement of Work which Firstserv will perform.

“Services Charges” means charges for Services performed.

“Service Misuse” means any use of the Services in breach of clause A.6.

“Service Order” means the document covered by this Agreement detailing the Services and including site addresses, duration, equipment listing, hours of cover, service level and contract price.

“Special Terms and Conditions” means the Special Terms and Conditions applicable to the Services provided under this Agreement which shall be attached to each Service Order.

“Statement of Work” means a document prepared by Firstserv providing additional information regarding Services.

“TCP/IP address” means a transmission control protocol or internet protocol address, as such terms are commonly understood by users of the Internet.

“Website” means any site or page on the world-wide web.

“Writing” means any method of permanently reproducing words in legible form, including without limitation facsimile transmission and electronic mail and “Written” shall be construed accordingly.

## **1. Services**

**A.2.1** Subject to these General Terms and Conditions, Firstserv will provide The Customer with the Services set out in the Service Order and/ or Statement of Work.

**A.2.2** Service Charges include travel (mainland UK only), accommodation and subsistence expenses of Personnel (including cost of time spent travelling) incurred in the provision of the Services. These Service Charges will be added as an additional expense where applicable.

## **A.3 General Provisions**

**A.3.1** If and to the extent only of any direct conflict between these General Terms and Conditions, the Special Terms and Conditions, the Statement of Work, the Sales Quotation, the Acceptable Use Policy and the Service Order the order of precedence shall be:

-Acceptable Use Policy

-Statement of Work

-Service Order

-Special Terms and Conditions

-General Terms and Conditions

-Sales Quotation.

**A.3.2** Nothing in this Agreement is intended or shall be construed to create a relationship of agency, partnership, or a fiduciary relationship between the parties. Accordingly, except as expressly authorised herein, neither party shall have the authority to act or make representations on behalf of the other party.

**A.3.3** Headings to clauses are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.

**A.3.4** In this Agreement, the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.

## **A.4 Price and Payment**

**A.4.1** The Service Charge shall be as specified in the Service Order. Firstserv reserves the right to review the Service Charges as shown in the Service Order at approximately each anniversary of each Service to reflect the effects of inflation and market changes. Any changes to the Service Charges will take effect thirty (30) days after written notice of the change is given to The Customer.

**A.4.2** Service Charges do not include the cost of any Additional Services which are subject to Additional Charges.

**A.4.3** Service Charges will be invoiced in advance of the Commencement Date unless otherwise specified in the Service Order. Additional Charges will be invoiced as and when incurred.

**A.4.4** Service Charges and Additional Charges shall be due and payable by The Customer within thirty (30) days of the date of invoice (without any withholding, deduction, set-off, counterclaim or cross demand on any account whatsoever other than in respect of a bona fide dispute under this Agreement, details of which have been provided to Firstserv in writing (in which case the Customer shall pay the full amount not in dispute) and clause A25 shall apply.

**A.4.5** Time of payment shall be of the essence and without limiting Firstserv's remedies, if payment is overdue The Customer shall indemnify Firstserv against any legal fees and other costs of collection and shall pay to Firstserv a sum equal to any loss suffered by it arising from exchange rate fluctuations and Firstserv shall have the right to charge interest for late payment of invoices at the same rate which would apply were the debt a qualifying debt under The Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment, whether before or after judgment and Firstserv may suspend performance of any Services pending payment in full.

**A.4.6** Any payment which falls due later than it would have done because of delay caused by The Customer shall be deemed to fall due when, but for The Customer's delay, it might reasonably be expected to have fallen due.

Firstserv may delay or withhold performance under this Agreement (including suspending Services without notice) until The Customer has made any payment or opened any letter of credit or established any other payment arrangements which are due to be made, opened or established and its time for performance shall be extended accordingly.

**A.4.7** In calculating the Service Charges, Firstserv has relied on the financial, commercial, technical and operational information provided by The Customer. If such information is inaccurate either by error, omission or misrepresentation then Firstserv reserves the right to review and increase as appropriate the Service Charges as detailed in the Service Order.

**A.4.8** All Service Charges are expressed exclusive of Value Added Tax which shall be paid by The Customer following receipt of a valid tax invoice, in accordance with clause A.4.4.

**A.4.9** Notwithstanding the provisions of clause A4.8 all payments shall be made free of any tax withholding. If any tax withholding is due on payments under the Agreement such tax shall be an additional cost for The Customer who shall promptly provide Firstserv with a certificate of all tax paid.

**A.4.10** If the payment of any amount is disputed then any undisputed element of that amount shall be paid and the disputed amount shall be dealt with in accordance with clause A25.

**A.4.11** Until payment of all sums due under any contract have been received in full and cleared funds, Firstserv shall have a right of lien over any goods or materials belonging to The Customer which are in Firstserv's possession or control.

## **A.5 Customer's Obligations**

**A.5.1** The Customer undertakes to Firstserv throughout the term of this Agreement to:

**A.5.1.1** provide Firstserv with accurate and up to date details of its e-mail, mobile telephone numbers and physical addresses and promptly to notify Firstserv in writing of any alterations thereto from time to time;

**A.5.1.2** obtain the consent of all individuals whose personal data are to be held on a domain name register or are otherwise provided to Firstserv for the purposes of this Agreement;

**A.5.1.3** ensure that all passwords and user IDs provided to The Customer are kept secure and confidential and are used only by authorised members of The Customer's staff;

**A.5.1.3** if the Place of Use is a site, system or network owned or controlled by The Customer, provide such access to the Place of Use as Firstserv shall require to discharge its obligations;

**A.5.1.5** if the Place of Use is a site owned or controlled by The Customer, provide such facilities at the Place of Use as Firstserv shall require to discharge its operations (including without limitation adequate and appropriate workspace and environmental conditions for Personnel and Equipment, use of telephone and facsimile machines, storage, electrical supplies, cabling and office furniture and equipment);

**A.5.1.6** grant all reasonable access to its premises and equipment to enable Firstserv to perform the Services during all normal working hours and upon reasonable notice from Firstserv at any other time;

**A.5.1.7** take all reasonable precautions to protect the health & safety of The Personnel while on The Customer's premises and/ or Place of Use;



**A.5.1.8** ensure that any premises and/ or Place or Use of The Customer to which Personnel have access for performance of Services fully comply with health and safety regulations and The Customer will not expose Personnel to unnecessary risk or danger to personal safety;

**A.5.1.9** ensure that Personnel are made aware of all relevant safety procedures and regulations at the Premises and/ or Place of Use, if the Place of Use is a site owned or controlled by The Customer;

**A.5.1.10** ensure that its employees and agents comply with all reasonable instructions made by Personnel in the course of performance of the Services or to enable Firstserv to limit any damage to either party, including without limitation complying with safety procedures;

**A.5.1.11** take all precautions to protect its data and ensure that a daily back-up arrangement is implemented before and during this Agreement and maintain disks or tapes containing back-ups unless Firstserv is providing this Service.

**A.5.1.12** at the request of Firstserv make available for the assistance of Firstserv in undertaking the Services all necessary documentation, information and system data relating to the Services or required to perform the Services and make available staff familiar with The Customer's programs and/or applications and/or requirements of the Services, which staff will fully co-operate with Personnel to enable the Services to be performed;

**A.5.1.13** comply at all times and in all respects with the Acceptable Use Policy; and

**A.5.1.14** indemnify Firstserv against any liability, loss, damage or expense (including legal fees and disbursements) incurred by it or arising in connection with The Customer's failure to comply with its obligations under this Agreement.

**A.5.2** The Customer will exercise due care in respect of the Equipment and in particular, if the Equipment is under The Customer's control, insure and maintain the Equipment in suitable premises and under suitable conditions as recommended by the Equipment manufacturer.

**A.5.3** Firstserv reserves the right to make a charge for any work carried out by Firstserv which is attributable to The Customer's failure to observe (or delay in observing) its obligations under this Agreement.

**A.5.4** The Services include support only insofar as specified in the relevant Special Terms and Conditions. We will use reasonable endeavors to meet any specified response times and to rectify specified faults or problems but do not guarantee that response times or rectification will be achieved.

**A.5.4.1** We shall not in any event be obliged to supply support:

a) in respect of faults or problems directly or indirectly or indirectly arising from:

i) incorrect use of the Services;

ii) products or services not supplied by us; or

iii) any cause external to the Services;

b) where you are using anything other than the most recent version of any relevant software

c) where you or any third party not authorised by us has modified the relevant software or attempted to resolve the problem; or

d) if any fees due to us are unpaid.



**A.5.4.2** Any support which we agree to supply in addition to that covered by this agreement shall be charged at our then current standard rates.

## **A.6 Acceptable Use**

**A.6.1** The provision by Firstserv of Services is conditional upon The Customer's compliance at all times with the Acceptable Use Policy and any breach of the Acceptable Use Policy by The Customer or its employees or agents shall entitle Firstserv, without limiting any other rights or remedies, to suspend or terminate the Services forthwith without notice.

**A.6.2** Without limiting clause A.6.1, Firstserv's network and Service(s) may only be used in accordance with this Agreement. The Customer shall comply at all times with all applicable laws and regulations, Firstserv's operating procedures, and the Acceptable Use Policy. The Customer shall not use or permit the use of the Service(s), the Customer's servers or Firstserv's networks or servers in a fraudulent manner or in a manner that violates the Acceptable Use Policy or any applicable law or regulation, to communicate or publish Inappropriate Materials or in a manner which may expose Firstserv to legal liability.

**A.6.3** The Customer shall fully indemnify, Firstserv against any and all claims, losses, damages, liabilities and expenses including, without limitation, reasonable legal fees, arising from or related to (i) Service Misuse or a breach of any other provision of this Agreement; (ii) any claim of infringement of any Intellectual Property Rights or other proprietary interest based on the possession or use of any Service(s), software or equipment furnished to The Customer or The Customer's end-user(s) and/or customer(s); (iii) any claim that any Material of The Customer, or the manner in which The Customer or The Customer's customers and/or end users make use of the Services or any Material, constitutes an infringement of any Intellectual Property Rights of any third party; (iv) any acts, omissions or Defaults of The Customer, its employees, agents or representatives.

## **A.7 Firstserv's Warranty**

**A.7.1** Firstserv warrants to The Customer that:

**A.7.1.1** it will perform the Services and any Additional Services with reasonable care and skill;

**A.7.1.2** it will perform any Additional Services it agrees to provide within a reasonable time of being so instructed in writing by The Customer;

**A.7.1.3** it will use reasonable endeavours to attain any service levels or project specifications which are agreed with The Customer; and

**A.7.1.4** that any Personnel required to visit The Customer's Place of Use for the provision of Services will comply with The Customer's health and safety procedures, such procedures to have been notified to Firstserv in writing prior to the Commencement Date.

**A.7.2** Firstserv does not warrant that any system, server, network or website of The Customer will operate without interruption.

## **A.8 Sale of Equipment**

**A.8.1** The provisions of this clause 8 shall apply if and to the extent that Firstserv agrees to supply goods of any kind, including software ("Goods") to The Customer.

**A.8.2** Risk of damage to or loss of the Goods shall pass to the Customer upon delivery.

**A.8.3** Notwithstanding delivery and the passing of risk in the Goods and any other provision of this Agreement, title to and ownership of the Goods shall not pass to The Customer until Firstserv has received the price therefor (as quoted by Firstserv) in full in cash or cleared funds.

**A.8.4** If at the date that payment in full for the Goods is made any other monies then due for payment by the Customer to Firstserv on any account have not been paid, title to the Goods shall not in any event pass to The Customer until Firstserv has received in cash or cleared funds payment in full of the monies overdue.

**A.8.5** Until such time as property in the Goods passes to The Customer, The Customer shall:

**A.8.5.1** hold the Goods as Firstserv's fiduciary agent and bailee;

**A.8.5.2** keep the Goods properly stored, insured and identified as Firstserv's property; and

**A.8.5.3** Firstserv shall, unless and to the extent prohibited by law, have a lien over any of the Customer's assets in its possession or control.

**A.8.6** A quotation for Goods is not an offer: it may be withdrawn or modified at any time prior to acceptance by Firstserv of an order and will in any event lapse thirty (30) days after its date of issue.

**A.8.7** Firstserv shall effect delivery of the Goods by informing The Customer that the Goods are ready for delivery and depositing them at the place for delivery stated in the order.

**A.8.8** Delivery times are approximate. Firstserv will not deliver goods in advance of the quoted delivery date other than with The Customer's agreement.

**A.8.9** If The Customer agrees that Goods may be delivered in instalments, each such instalment shall constitute a separate contract which may be separately invoiced. Any delay in delivery or termination of any instalment will not entitle the Customer to terminate the Contract as a whole, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery.

**A.8.10** Where Goods are expressly sold on an "as is", "as seen", "in existing condition" or "ex-rental" or similar basis, Firstserv shall have no liability for defects, other than latent defects which could not have been apparent from a physical inspection of the Goods.

**A.8.11** Where the Goods are supplied by Firstserv for export from the United Kingdom, The Customer shall comply with all applicable legislation and regulations and payment of any duties, import taxes or other costs of import.

**A.8.12** The Customer shall obtain all licences, authorisations and approvals required for export of Goods from the UK or import into any other country and shall indemnify Firstserv against any liability in relation to The Customer's breach of any of the provisions of this clause.

**A.8.13** It is agreed that, insofar as it supplies Goods to The Customer, Firstserv is trading as a reseller only and is not in any way the author, writer, manufacturer or any other developing party to any software or hardware supplied by it.

**A.8.14** At the request and expense of The Customer, subject to Firstserv first being indemnified and secured to its reasonable satisfaction by The Customer against any costs, liabilities and expenses which it thereby incurs, Firstserv will on The Customer's behalf enforce all warranties, conditions or other rights granted in its favour by the manufacturer of the Goods.

## **A.9 Limitation of Liability**

**A.9.1** Neither party excludes or limits liability to the other party for death or personal injury resulting from its own or that of its employees', agents' or sub-contractors' negligence or for fraudulent misrepresentation. Neither party excludes or limits liability to the other party for breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 or for any other liability which may not be limited or excluded by law.

**A.9.2** All clauses in this agreement which exclude or limit Firstserv's liability apply to and may be enforced by Firstserv's directors, officers, employees, subcontractors, agents and affiliated companies as well as to/by us and those parties shall all have the benefit of the Limits in terms of the Contracts (Rights of Third Parties) Act 1999.

**A.9.3** Subject to clauses A.9.1 and A.9.2, the liability of Firstserv for Defaults shall be subject to the financial limits set out in this clause A.9.3 as follows:

**A.9.3.1** the aggregate liability of Firstserv for each Default or set of connected Defaults of Firstserv or its Personnel resulting in direct loss of or damage to the tangible property of The Customer shall in no event exceed fifty thousand pounds (£50,000.00) in any twelve (12) month period;

**A.9.3.2** save for liability for Defaults which cause direct loss of or damage to the tangible property of The Customer, The Customer shall insure its tangible property to its full replacement value against all normal commercial risks and Firstserv shall have no liability whatsoever to The Customer for any loss of or damage to The Customer's tangible property;

**A.9.3.3** in the case of any other loss or damage caused by a Default of Firstserv or of its Personnel or any other liability (whether in contract, tort, for breach of statutory duty or otherwise) arising under or in relation to this Agreement, the aggregate liability of Firstserv shall not exceed one hundred and twenty-five per cent (125%) of the aggregate of the Service Charges paid for the Services or the price paid for the Goods in relation to which the Default or liability arose.

**A.9.4** Subject to clauses A.9.1 and A.9.2, Firstserv shall not be liable to The Customer whether in contract, tort, statutory duty or otherwise for any loss which is or which represents loss of or reinstatement of data, misdirection or non-delivery or non-publication of data, loss of profits, loss of goodwill, loss of revenue, business interruption, loss of production, management time, third party liability, loss of use of any tangible or intangible asset, loss of anticipated savings, loss of contracts and/or any indirect, special or consequential loss.

**A.9.5** If a number of events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

**A.9.6** The Customer agrees to afford Firstserv not less than forty-five (45) days in which to remedy any Default.

### **A.9.7**

**A.9.8** Subject to clauses A.9.1 and A.9.2, Firstserv shall have no liability to The Customer in respect of any Default unless The Customer shall have served notice of the same upon Firstserv within three months of the date it became aware of the circumstances giving rise to the Default or the date when it ought reasonably to have become so aware.

**A.9.9** Subject to clauses A.9.1 and A.9.2, Firstserv accepts no responsibility for any viruses introduced to The Customer's premises, equipment, systems or networks no matter how so introduced.





**A.9.10** Nothing in clause A.9 shall confer any right or remedy upon The Customer to which it would not otherwise be entitled.

**A.9.11** The express terms of this Agreement are in substitution for and Firstserv excludes (to the fullest extent permitted by law) all terms and warranties implied by law.

**A.9.12** Firstserv shall not be liable for any defect, wastage or other loss whatsoever (unless and to the extent caused directly by Firstserv's negligence or wilful default) in, of or arising from equipment, hardware or software or other items (in this clause, "equipment") supplied or made available to Firstserv by The Customer, which equipment shall be held, worked on and used at the Customer's risk. Quantities of equipment supplied by the Customer shall allow for normal spoilage and fair wear and tear.

**A.9.13** Firstserv shall not be responsible for any loss, damage, cost or expense arising from any defect, mistake or inaccuracy in any equipment specified or supplied by The Customer (unless and to the extent caused by Firstserv's negligence). Any loss, damage, cost or expense arising therefrom shall be for the sole account of The Customer who shall indemnify Firstserv accordingly.

**A.9.14** Firstserv's liability for equipment specified or provided to Firstserv by The Customer or otherwise held or worked on by Firstserv on behalf of The Customer shall be limited to the lesser of the basic raw material cost of the equipment or an independent external valuation of such equipment.

**A.9.15** Subject to clauses A.9.1 and A.9.2, Firstserv shall have no liability under or in relation to this Agreement for any Default which would not have arisen but for or which is caused by The Customer's Default.

**A.9.16** The Customer acknowledges and agrees that the allocation of risk in this clause A.9 is fair and reasonable having regard to the Service Charges and to The Customer's ability to rely on its own business insurance to bear or recover any losses described in clause A.9.3. and A.9.4.

## **A.10 Customer's Warranty**

**A.10** The Customer warrants and undertakes to Firstserv that it has full power, capacity and authority to enter into this Agreement (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of The Customer. The Customer undertakes to indemnify Firstserv against any loss or damage which Firstserv may suffer as a result of a breach by The Customer of this clause A.10 or clause A5.

## **A.11 Duration of Agreement**

**A.11** This Agreement will commence on the Effective Date and will continue thereafter until the later of termination in accordance with clause A13 or the termination of the last Service Order.

## **A.12 Customer's Representatives**

**A.12** The Customer shall promptly communicate to Firstserv the identity of a person(s) or the department within its organisation who shall act as the sole contact point and channel of communication for the provision by Firstserv of the Services. The Customer shall forthwith inform Firstserv of any change in the identity of any such person(s) or department. If Firstserv requires, The Customer shall nominate a suitable alternative person.

## **A.13 Termination**

**A.13.1** This Agreement or specific Service Order or part thereof may only be terminated:

**A.13.1.1** by either party giving thirty (30) days' written notice to the other such notice to expire at the end of the minimum period specified in the applicable Service Order or, if no minimum period is so specified, on any anniversary of the Effective Date;

**A.13.1.2** in accordance with clauses A18.3 or A24;

**A.13.1.3** forthwith by Firstserv if The Customer fails to pay the Service Charges or any Additional Charges due within 14 days of the due date for payment;

**A.13.1.4** forthwith by either party if the other commits any material breach of any term of this Agreement (other than for non-payment of Service or Additional Charges) and which (in the case of a breach capable of being remedied) shall not have been remedied within 45 days of a written request by the other party to remedy the same;

**A.13.1.5** forthwith by either party if the other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composite scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver, administrator or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering the winding up of the other party.

**A.13.1.6** on the event.

**A.13.2** Termination shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## **A.14 Effects of Termination**

**A.14.1** Upon termination for any reason, all sums due to Firstserv shall become immediately payable by The Customer without set-off, withholding or deduction on any account whatsoever.

**A.14.2** Following completion of any work by Firstserv or termination of any Services or of this Agreement all copies of programs, manuals and documentation used by Firstserv for the purpose of providing such Services or performing the work will be returned to The Customer.

**A.14.3** Upon termination of this Agreement for whatever reason, The Customer will:

**A.14.3.1** immediately deliver up any of Firstserv's property which it has no contractual right to retain (including but not limited to any stock stored on The Customer's site by Firstserv) and Firstserv may enter any premises to recover and remove such property. Any property not recovered will be charged at cost plus reasonable costs of procuring same; and

**A.14.3.2** within 7 days of termination, cease using and delete from all computers in its possession or under its control, all TCP/IP addresses supplied by Firstserv.

**A.14.4** Termination of this Agreement shall not affect:

**A.14.4.1** the accrued rights and remedies of the parties (which rights and remedies are at all times cumulative and not exclusive); and

**A.14.4.2** the continuance in force of any clause expressed to remain in force after termination or required to give effect to any such clause or of clauses A.4.5, A.4.11, A.5.1.15, A.9, A.10, A.14, A.15, A.17, A.18, A.19, A.21, A.22, A.25, A.27 or A.29.

## **A.15 Confidentiality**

**A.15.1** Each of the parties undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or entering into of this Agreement save that which is:

**A.15.1.1** already in its possession or developed independently by it other than as a result of a breach of this clause; or

**A.15.1.2** already generally available and in the public domain otherwise than as a result of a breach of this clause;

**A.15.1.3** a disclosure to enable a determination to be made under clause A24.

**A.15.1.4** a disclosure by either party of any document related to the Agreement to which it is a party and which the other party (acting reasonably) has agreed in writing with the disclosing party contains no commercially sensitive information.

**A.15.2** Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause A15.1 by its employees, agents or sub-contractors.

**A.15.3** Where either party, in carrying out its obligations under this Agreement, is provided with information relating to people, that party shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless that party has sought the prior written consent of that person and the other party.

## **A.16 Employment or Engagement of Firstserv's Staff**

**A.16.1** The Customer shall not directly or indirectly, during nor at any time within twelve (12) months after the termination of this Agreement:

**A.16.1.1** solicit or entice away or employ or attempt to solicit or entice away or employ any Personnel who are or have been directly associated with the performance of this Agreement;

**A.16.1.2** retain, engage or in any other way whatsoever have the benefit of the services of any Personnel who are or have been directly associated with the performance of this Agreement, other than pursuant to the terms of this Agreement and/or Service Order executed with Firstserv;

**A.16.2** save as stated in A16.1, if any Personnel who are directly associated with the performance of this Agreement are employed either directly or indirectly by The Customer, by way of compensation for loss of Personnel, business interruption and associated recruitment costs The Customer shall pay to Firstserv the equivalent of twelve (12) months' salary of the relevant Personnel.

## **A.17 Data Protection**

**A.17.1** The parties will ensure that in storing and processing personal data they will at all times comply with the provisions of the latest Data Protection Act and the Data Protection Principles together with any subsequent re-enactment or amendment thereof, and all personal data acquired by either party from the other will be returned to

the disclosing party on request. The parties hereby acknowledge that performance of a duty imposed by legislation will not constitute a breach of any obligation in respect of confidentiality or privacy or otherwise pursuant to this Agreement which may be owed to the other party.

**A.17.2** If and to the extent that Firstserv acquires from The Customer any personal data in connection with the Services, Firstserv shall act as a data processor only and The Customer shall remain as data controller in respect of such data.

**A.17.3** The Customer acknowledges that details of any IP address registered for it or used by it in connection with receipt of the Services constitute public information available on public databases and The Customer hereby irrevocably consents to Firstserv's communication of such information to the extent required for the purpose of providing the Services.

### **A.18 Force Majeure**

**A.18.1** Neither party shall be liable for any breach of its obligations (other than a payment obligation) resulting from causes beyond its reasonable control including but not limited to flood, storm, fire, strikes, lock-outs or industrial disputes, insurrection or riots, embargoes, inability to obtain supplies, telecommunication failures or attacks caused by third parties, requirements or regulations of any civil or military authority (an "Event of Force Majeure").

**A.18.2** Each of the parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

**A.18.3** If a Default due to an Event of Force Majeure continues for more than two (2) calendar months, then the party not in Default shall be entitled to terminate this Agreement forthwith by written notice to the party subject to Force Majeure. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

### **A.19 Waiver**

**The waiver by either party of a breach of default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver or any breach of default by the other party.**

### **A.20 Notices**

**A.20** Any notice, request, instruction or other document to be given shall be delivered or sent by first class post or by facsimile (such facsimile notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in this Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile) upon the expiration of 12 hours after despatch.

### **A.21 Invalidity and Severability**

**A.21** If any provision of this Agreement is found by any court, or administrative body, of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or



enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

## **A.22 Entire Agreement**

**A.22** This Agreement embodies the entire legal and contractual relationship between the parties relating to the subject matter of this Agreement and, except in the case of any fraudulent misrepresentation made by either party in connection with the subject matter of this Agreement and/or save as may be expressly referred to or referenced in this Agreement, terminates, cancels and supersedes all prior representations, agreements or understandings (written or oral) with respect to this Agreement and its subject matter.

## **A.23 Successors**

**A.23** This Agreement shall be binding upon and ensure for the benefit of the successors in title of the parties.

## **A.24 Assignment**

**A.24** The Customer shall not assign any of its rights or obligations under this Agreement to any other person and breach of this clause shall entitle Firstserv to terminate this Agreement forthwith.

## **A.25 Disputes and Law**

**A.25.1** The parties shall attempt to resolve any dispute relating to this Agreement through negotiations between senior executives of the parties who have authority to settle the dispute.

**A.25.2** Subject to clause A25.1, if the matter is not resolved through negotiation, the parties may at their election, attempt in good faith to resolve the dispute through an Alternative Dispute Resolution (“ADR”) procedure as recommended to the parties by the Centre for Dispute Resolution in London.

**A.25.3** If the matter has not been resolved by an ADR procedure within thirty (30) days of the initiation of that procedure, or if either party does not wish to participate in an ADR procedure, the dispute may be referred by either party to the English courts and the parties submit to their exclusive jurisdiction for that purpose.

**A.25.4** This Agreement shall be governed by and construed in accordance with English Law and is subject to the exclusive jurisdiction of the English Courts.

## **A.26 Change Control**

**A.26.1** The Customer may at any time request and Firstserv may at any time recommend changes in the Service.

**A.26.2** Neither party will be required to agree to any requested or recommended change but neither party will unreasonably withhold its agreement to such a request. It shall be unreasonable to refuse consent where the change is necessitated by a change in law which means a change should occur to facilitate compliance with this Agreement.

**A.26.3** Firstserv shall advise The Customer of the likely impact of any requested or recommended change on the price and timescales set out in the Service Order or Statement of Work. In respect of a change requested by the Customer, Firstserv reserves the right to make a reasonable charge for the preparation of the impact assessment.

**A.26.4** Until such time as any change is formally agreed and processed, Firstserv shall, unless otherwise agreed, continue to perform and to be paid in accordance with this Agreement as if such change has not been requested or recommended.

**A.26.5** The parties shall respond in writing to, or shall meet to discuss, any requested or recommended change as soon as practicable. If the parties have not agreed any matter arising out of the request or recommendation for change within four weeks of the request or recommendation the matter shall be dealt with through the dispute resolution procedure set out in clause A25. No failure by the parties to comply with the provisions of this sub-clause A26.5 shall relieve The Customer from its obligations under this Agreement.

**A.26.6** Any agreement to a requested or recommended change shall become valid as an amendment to this Agreement only when recorded in writing and signed by authorised representative of both parties.

## **A.27 Intellectual Property Rights**

**A.27.1** Firstserv shall retain the right and title to all Intellectual Property Rights and other rights in any equipment, programs and to any work or material created or supplied by Firstserv or the Personnel in the course of providing the Services or in quoting for the Services.

**A.27.2** The Customer shall follow all reasonable instructions that Firstserv gives from time to time with regard to the use of Intellectual Property Rights and other notice of ownership rights of Firstserv and / or its licensors.

**A.27.3** Firstserv warrants, subject to the other terms of this Agreement, that The Customer's use or receipt in the United Kingdom of any Products supplied by Firstserv, in accordance with their respective Product Descriptions and any other instructions from Firstserv which it may give concerning their use, will not infringe the Intellectual Property Rights of any third party. Firstserv's liability under this warranty shall be conditional on the following:

**A.27.3.1** The Customer promptly notifying Firstserv in writing of any allegation made by a third party that The Customer's use of any Products infringes its Intellectual Property Rights;

**A.27.3.2** The Customer making no admissions in relation to such an allegation without Firstserv's consent;

**A.27.3.3** where any allegation is made or, in Firstserv's opinion, is likely to be made, by a third party that its Intellectual Property Rights are being infringed by The Customer's use of Products supplied by Firstserv, Firstserv shall have the option to do any or all of the following:

(i) repay to The Customer any sums paid by The Customer in respect of the affected Products (and, if it so elects, to require The Customer to deliver up any affected Products to Firstserv) and if it does so it shall have no further liability whatsoever to The Customer under this Agreement in respect of or arising from such Products;

(ii) at its own expense modify or replace the Products (in such a way that their functionality or standard overall is not materially adversely affected) so as to avoid the infringement; and / or

(iii) conduct and / or settle all negotiations and litigation with any such third party in which case The Customer shall not have any dealings with such third party in relation to its allegation but shall give Firstserv all reasonable assistance required by Firstserv in such negotiations or litigation. The costs incurred or recovered in such negotiations and litigation will be for Firstserv's account.

**A.27.4** Save as provided in clause A27.3, Firstserv shall have no liability whatsoever to The Customer in respect of any infringement or alleged infringement of any Intellectual Property Rights or other rights and in any event Firstserv shall have no liability to The Customer hereunder for any infringement which is based on the use of any item supplied by Firstserv other than in accordance with the terms of this Agreement and their respective Product Descriptions and any other instructions Firstserv may give concerning their use, or in combination with any goods or services not supplied by Firstserv.



**A.27.5** Any Internet protocol or TCP/IP address provided by Firstserv shall be and remain the absolute property of Firstserv and The Customer shall have a non-transferable licence to use such address during the continuance of this Agreement only.

### **A.28 Legislative Change**

**A.28** Firstserv reserves the right to make any changes in the specification of the Services which are required to conform with any applicable law, regulation or safety requirement which is not in existence or within the reasonable contemplation of the parties at the Effective Date or which do not materially affect their quality or performance. If any variation in the Services or the Agreement is agreed or is required for compliance with any applicable law, regulation or safety recommendation, The Customer shall pay such additional amount as is fair and reasonable and Firstserv shall have reasonable additional time to perform the Agreement.

### **A.29 Third Party Rights**

**A.29** A person who is not party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right of remedy of a third party which has been expressly conferred in agreement or is available apart from that Act.

## **Section B – Dedicated Server Services**

The document entitled “Section A – General Terms and Conditions” shall govern the parties’ relationship under these Special Terms and Conditions: if there is a direct conflict between these Special Terms and Conditions and the General Terms and Conditions, these Special Terms and Conditions shall take precedence.

### **B.1 Definitions**

**B.1** In these Special Terms and Conditions Section B, the following terms shall have the meanings given to them below:

“Availability” means the availability of our network demonstrated by means of either a ping or traceroute program.

“Business Hours” means 09.30 a.m. to 5.30 p.m. on a day other than a Saturday, Sunday, bank or other public holiday in England and Wales.

“Downtime” means in respect of any month the total time during which the Service is not Available (other than as a result of Planned Outages).

“Facility” means any hosting facility supplied by Firstserv pursuant to the Services at the premises specified in the Service Order.

“Hour(s)” means 60 minutes during Firstserv’s normal business hours (being 9.30am to 5.30pm, Monday to Friday, excluding weekends and UK bank or public holidays).

“Outage” means any period during which any user cannot process an application transaction or send or receive e-mails utilising the Service.

“Planned Outage” means any period during which any user cannot process an application transaction or send or receive e-mails utilising the Service caused by work for the purpose of maintenance or support.

“Remote Hands Assistance” means assistance with the operation and maintenance of the dedicated server from a qualified technician of Firstserv on a remote basis, as more particularly described in the Service Order, if applicable.





“Server” means any computer server equipment operated by Firstserv in connection with the provision of the Services.

“Service Minutes” means minutes of connectivity to Firstserv.

Other defined terms in these Special Terms and Conditions Section B shall have the meanings given to them in the General Terms and Conditions.

## **B.2 Duration**

**B.2** This Agreement shall commence on the Commencement Date and remain in force for the agreed minimum term as set out in the Service Order (or if no such period is specified, for 12 months) and shall continue for successive periods equivalent to the minimum term until terminated by either party giving not less than thirty (30) days’ written notice to the other such notice expiring at the end of any such period.

## **B.3 Provision of Services**

**B.3.1** Firstserv agrees, in consideration of payment of the Service Charges and conditional upon The Customer’s compliance with this Agreement to make a dedicated server available to The Customer.

**B.3.2** The precise scope of the Services (in particular, as to space quotas) shall be as specified in the Service Order or the Sales Quotation.

**B.3.3** Firstserv shall provide telephone support relating to the Server or other equipment of Firstserv as detailed in the Service Order. Telephone support does not include support in relation to the operation of The Customer’s own website and related software or programming support.

## **B.4 Exclusions**

**B.4.1** Firstserv does not and cannot control the performance of any data, products, or service(s) controlled by third parties. At times action or inaction by third parties can impair or disrupt Service(s). Firstserv makes no representations and expressly disclaims all warranties regarding any data, products, or service(s) controlled by any third party, including the providers of telecommunications or network products or services. Such data, products, and services are not promised to be free of error or interruption, and Firstserv expressly disclaims all liabilities arising from any such error, interruption, or other failure.

**B.4.2** Routine maintenance and periodic system repairs, upgrades, and reconfiguration of the Server and/or the Facility (together, “Maintenance”) may result in temporary impairment or interruption in Services. As a result, Firstserv does not warrant or guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Services, in which circumstances it will give The Customer as much notice as reasonably practicable. Firstserv shall use all reasonable endeavours to keep any downtime or disruption to access to a minimum.

**B.4.3** Firstserv does not validate Material supplied by The Customer and the provision of any Services by Firstserv shall not constitute a waiver of any of its rights under the Agreement or at law.

## **B.5 Customer Responsibilities**

**B.5.1** The Customer shall post to the Server only Material which is compatible with the Server and otherwise “server-ready” and which requires no manipulation by Firstserv.



**B.5.2** The Customer acknowledges that effective use of the Services requires knowledge on its part of hyper text language, file transfer protocols and other protocols, language and software which are not part of the Services and The Customer warrants and undertakes that it has, or will procure, expertise equivalent to that of a qualified and experienced web development service provider.

**B.5.3** The Customer warrants that all Material contained in or linked to any website owned or controlled by it and hosted by Firstserv pursuant to the Services and its use of the Services:

**B.5.3.1** is free from Inappropriate Material, whether such Material has been supplied by The Customer or a third party;

**B.5.3.2** does not infringe the Intellectual Property Rights of any third party in any jurisdiction where such Material may be accessed via its website; and

**B.5.3.3** is free from viruses, worms, Trojan horses and other harmful code.

**B.5.4** The Customer shall supply to Firstserv on demand all information required by Firstserv in order to provide the Services including without limitation:

**B.5.4.1** The Customer's full name, email address, telephone number and mailing address;

**B.5.4.2** The full name and full contact details (including mobile telephone number) of The Customer's representative appointed pursuant to clause A.12;

**B.5.4.3** any information required from time to time to keep the information required by this clause fully up to date and complete at all times.

**B.5.5** The Customer warrants that the information provided by it pursuant to clause B.5.4 is complete and accurate. The Customer acknowledges that the provision of any Services requiring notification to The Customer (such as monitoring services) is conditional upon Firstserv being in possession of an up to date email address and mobile telephone number for The Customer or its appointed representative.

**B.5.6** The Customer shall indemnify Firstserv against any claims, liabilities, losses, expenses (including legal fees) and costs which Firstserv incurs in connection with any breach by The Customer of its obligations in this clause

**B.5.7** Without limiting any other remedies available to it, Firstserv may at its sole discretion terminate or suspend the Service and The Customer's access to or use of any username, password or email address supplied by Firstserv, without notice or liability if it considers that The Customer is in breach of the Acceptable Use Policy or any other provision of this Agreement.

## **B.6 Price and Payment**

**B.6** The Service Charges shall be as specified in the applicable Service Order or Sales Quotation and shall be paid in accordance with clause A.4 and the Service Order.

## **B.7 Excess data transfers**

**B.7.1** The Customer shall observe any limitations on data transfer according to the Service Order and, if it exceeds such limits at any time, The Customer shall pay for such excess data transfer at Firstserv's then current rates.

**B.7.2** Firstserv shall have no liability for failure to achieve any service levels or to provide the Services which is caused by a breach by The Customer of this clause.

## **B.8 Service Levels**



**B.8.1** Firstserv undertakes to use all reasonable endeavours to ensure that, subject to the terms of this Agreement, the web hosting Services will be available for not less than the percentage per calendar month specified in B8.3.

**B.8.2** If in any calendar month the availability specified in clause B.8.1 is not achieved, The Customer, as its sole remedy in respect of such non-availability, shall be entitled to service credits calculated in accordance with

**B.8.3.2.2** which may be set off against the price of future Services.

**B.8.3.2.1** Planned outages. All work for the purpose of maintenance or support as part of Planned Outages will take place outside Business Hours. Planned Outages will be notified to you wherever possible on five (5) days prior notice unless otherwise agreed or in case of emergency. We shall wherever possible ensure that there are no more than two (2) Planned Outages each calendar month.

**B.8.3.2.2** Availability. Availability is calculated at the end of each month in accordance with the following formula:

Where:

“A”: means the Availability of the Service (expressed as a percentage).

“D”: means Downtime in the respective month - expressed in minutes.

“T”: means the total number of Service Minutes in the respective month.

**B.8.3.2.3** Calculation of Downtime. Downtime is calculated from the time of notification of a fault by either you or us, and ends when the Service is restored to full working order as determined and certified by us. However, Downtime is to be disregarded to the extent it is attributable to your failing to keep equipment in standard office environment levels of humidity and temperature, or to any other abuse, misuse or modification of equipment or software by you.

**B.8.3.3** Compensation calculations

**B.8.3.3.1** If Availability falls below the guaranteed levels in any particular month then we shall credit you by reference to the following table:

MONTHLY NETWORK AVAILABILITY

(EXPRESSED AS A PERCENTAGE)

99.00 - 99.89

97.00 - 98.99

95.00 - 96.99

90.00 - 94.99

Under 89.99

REIMBURSEMENT OF THE MONTHLY SERVICE FEE

(EXPRESSED AS A PERCENTAGE)

5%

10%

15%

20%

25%

#### **B.8.3.4** Fault monitoring and resolution

**B.8.3.4.1** Firstserv is responsible for recording Availability, Planned and unplanned Outages and fault resolution time scales.

**B.8.3.4.2** Firstserv shall be notified of faults using only the following methods:

- By emailing [auto-support@firstserv.com](mailto:auto-support@firstserv.com), including the contact name, contact number and a description of the problem, or,
- Calling Firstserv Server Support on +44 20 7871 5515

At the time of notification of a fault, we will assign a priority to the fault in accordance with the priority classifications set out below, by agreement with you.

#### **B.8.3.5** Fault priority

**B.8.3.5.1** Problems will be classified by us in accordance with the following table:

<b>PRIORITY CLASSIFICATION</b>	<b>DESCRIPTION</b>
Priority 1 Faults	System non-functional with high impact on operations.
Priority 2 Faults	System partially usable with medium impact on operations, or a Priority 1 Fault to which a temporary work around has been applied.
Priority 3 Faults	Minor problems with very low impact on operations.
Priority 4 Faults	Documentation errors.

#### **B.8.3.6** Fault resolution process

**B.8.3.6.1** We will initially attempt to qualify the suspected fault as an actual fault and will require you to perform checks and tests to further isolate the suspected fault at this time and at other times during the resolution process.

**B.8.3.6.2** Where further checks are inconclusive or are liable to affect live operation, we shall attempt to replicate and test the suspected fault internally.

**B.8.3.6.3** We shall make reasonable endeavours to fix or provide a work around to any problem that will not affect the functionality or performance or Availability of the Service in the following time scales:

PRIORITY	INITIAL TIME TO RESPOND	TIME TO RESOLUTION
Priority 1 Faults	15 minutes	4 hours
Priority 2 Faults	3 hours	24 hours
Priority 3 Faults	24 hours	3 days
Priority 4 Faults	48 hours	30 days

**B.8.3.7 Remote Hands Assistance**

**B.8.3.7.1** Remote Hands Assistance, if relevant, includes assistance of the following kind:

- Pushing a button, switching a toggle or setting a dip-switch.
- Reboot/power cycle of equipment as required.
- Securing cabling to connections.
- Observing, describing or reporting on indicator lights or display information on machines or consoles.
- Modifying basic cable layout.
- Cable patching.
- Checking alarms for faults.
- Changing faulty plug in cards and hard drives.
- Any configuration or installation work as long as the customer is able to provide either full verbal or written step by step instructions.
- Perform basic customer-led fault finding on customer equipment.

**Section C – Shared Web Hosting Terms and Conditions**

The document entitled “Section A – General Terms and Conditions” shall govern the parties’ relationship under these Special Terms and Conditions: if there is a direct conflict between these Special Terms and Conditions and the General Terms and Conditions, these Special Terms and Conditions shall take precedence.

## C.1 Definitions

**C.1** In these Special Terms and Conditions Section C, the following terms shall have the meanings given to them below:

“Facility” means any hosting facility supplied by Firstserv pursuant to the Services at the premises specified in the Service Order.

“Hour(s)” means 60 minutes during Firstserv’s normal business hours (being 9.30am to 5.30pm, Monday to Friday, excluding weekends and UK bank or public holidays).

“Server” means any computer server equipment operated by Firstserv in connection with the provision of the Services.

Other defined terms in these Special Terms and Conditions Section C shall have the meanings given to them in the General Terms and Conditions.

## C.2 Duration

**C.2** This Agreement shall commence on the Commencement Date and remain in force for the agreed minimum term as set out in the Service Order (or if no such period is specified, for 12 months) and shall continue for successive periods equivalent to the minimum term until terminated by either party giving not less than thirty (30) days’ written notice to the other such notice expiring at the end of any such period.

## C.3 Provision of Services

**C.3.1** Firstserv agrees, in consideration of payment of the Service Charges and conditional upon The Customer’s compliance with this Agreement to host The Customer’s Website on a shared server during the continuance of this Agreement

**C.3.2** The precise scope of the Services (in particular, as to space quotas) shall be as specified in the Service Order or the Sales Quotation.

**C.3.3** Firstserv shall provide telephone support relating to the Server or other equipment of Firstserv. Telephone support does not include support in relation to the operation of The Customer’s own website and related software or programming support.

**C.3.4** Firstserv shall be notified of faults using only the following methods:

- By emailing [auto-support@firstserv.com](mailto:auto-support@firstserv.com), including the contact name, contact number and a description of the problem, or,
- Calling Firstserv Support on +44 20 7871 5515

At the time of notification of a fault, we will assign a priority to the fault in accordance with the priority classifications set out below, by agreement with you.

## C.4 Exclusions

**C.4.1** Firstserv does not and cannot control the performance of any data, products, or service(s) controlled by third parties. At times action or inaction by third parties can impair or disrupt Service(s). Firstserv makes no representations and expressly disclaims all warranties regarding any data, products, or service(s) controlled by any third party, including the providers of telecommunications or network products or services. Such data, products,



and services are not promised to be free of error or interruption, and Firstserv expressly disclaims all liabilities arising from any such error, interruption, or other failure.

**C.4.2** Routine maintenance and periodic system repairs, upgrades, and reconfigurations of the Server and/or the Facility (together, "Maintenance") may result in temporary impairment or interruption in Services. As a result, Firstserv does not warrant or guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Services, in which circumstances it will give The Customer as much notice as reasonably practicable. Firstserv shall use all reasonable endeavours to keep any downtime or disruption to access to a minimum.

**C.4.4** Firstserv does not validate Material supplied by The Customer and the provision of any Services by Firstserv shall not constitute a waiver of any of its rights under the Agreement or at law.

## **C.5 Customer Responsibilities**

**C.5.1** The Customer shall post to the Server only Material which is compatible with the Server and otherwise "server-ready" and which requires no manipulation by Firstserv.

**C.5.2** The Customer acknowledges that effective use of the Services requires knowledge on its part of hyper text language, file transfer protocols and other protocols, language and software which are not part of the Services and The Customer warrants and undertakes that it has, or will procure, expertise equivalent to that of a qualified and experienced web development service provider.

**C.5.3** The Customer warrants that all Material contained in or linked to any website owned or controlled by it and hosted by Firstserv pursuant to the Services and its use of the Services:

**C.5.3.1** is free from Inappropriate Material, whether such Material has been supplied by The Customer or a third party;

**C.5.3.2** does not infringe the Intellectual Property Rights of any third party in any jurisdiction where such Material may be accessed via its website; and

**C.5.3.3** is free from viruses, worms, Trojan horses and other harmful code.

**C.5.4** The Customer shall supply to Firstserv on demand all information required by Firstserv in order to provide the Services including without limitation:

**C.5.4.1** The Customer's full name, email address, telephone number and mailing address;

**C.5.4.2** the full name and full contact details of The Customer's representative appointed pursuant to clause A.12; and

**C.5.4.3** any information required from time to time to keep the information required by this clause fully up to date and complete at all times.

**C.5.5** The Customer warrants that the information provided by it pursuant to clause C.5.4 is complete and accurate. The Customer acknowledges that the provision of any Services requiring notification to The Customer (such as monitoring services) is conditional upon Firstserv being in possession of an up to date email address and mobile telephone number for The Customer or its appointed representative.

**C.5.6** The Customer shall indemnify Firstserv against any claims, liabilities, losses, expenses (including legal fees) and costs which Firstserv incurs in connection with any breach by The Customer of its obligations in this clause C.5.



**C.5.7** Without limiting any other remedies available to it, Firstserv may at its sole discretion terminate or suspend the Service and The Customer's access to or use of any username, password or email address supplied by Firstserv, without notice or liability if it considers that The Customer is in breach of the Acceptable Use Policy or any other provision of this Agreement.

## **C.7 Price and Payment**

**C.7** The Service Charges shall be as specified in the applicable Service Order or Sales Quotation and shall be paid in accordance with clause A.4.

## **C.8 Excess data transfers**

**C.8.1** The Customer shall observe any limitations on data transfer notified to it or published on the Firstserv Website from time to time and, if it exceeds such limits at any time, The Customer shall pay for such excess data transfer at Firstserv's then current rates.

**C.8.2** Firstserv shall have no liability for failure to achieve any agreed service levels or to provide the Services which is caused by a breach by The Customer of this clause.

## **Section D – Colocation Services Terms and Conditions**

The document entitled "Section A – General Terms and Conditions" shall govern the parties' relationship under these Special Terms and Conditions: if there is a direct conflict between these Special Terms and Conditions and the General Terms and Conditions, these Special Terms and Conditions shall take precedence.

### **D.1 Definitions**

**D.1** In these Special Terms and Conditions Section D, the following terms shall have the meanings given to them below:

"Availability" means the availability of our network demonstrated by means of either a ping or traceroute program.

"Business Hours" means 09.30 a.m. to 5.30 p.m. on a day other than a Saturday, Sunday, bank or other public holiday in England and Wales.

"Customer Server" means the computer server equipment operated by the Customer at the Facility and any other equipment permitted by Firstserv to be kept by The Customer at the Facility, as listed in the Service Order.

"Downtime" means in respect of any month the total time during which the Service is not Available (other than as a result of planned Outages).

"Facility" means any hosting facility supplied by Firstserv pursuant to the Services at the premises specified in the Service Order.

"Hour(s)" means 60 minutes during Firstserv's normal business hours (being 9.30am to 5.30pm, Monday to Friday, excluding weekends and UK bank or public holidays).

"Outage" means any period during which any user cannot process an application transaction or send or receive e-mails utilising the Service.

"Planned Outage" means any period during which any user cannot process an application transaction or send or receive e-mails utilising the Service caused by work for the purpose of maintenance or support.



“Remote Hands Assistance” means assistance with the operation and maintenance of The Customer Server from a qualified technician of Firstserv on a remote basis, as more particularly described in the Service Order.

“Server” means any computer server equipment operated by Firstserv in connection with the provision of the Services.

“Service Minutes” means minutes of connectivity to Firstserv.

Other defined terms in these Special Terms and Conditions Section D shall have the meanings given to them in the General Terms and Conditions.

## **D.2 Firstserv’s Warranty**

**D.2** This Agreement shall commence on the Commencement Date and remain in force for the agreed minimum term as set out in the Service Order (or if no such period is specified, for 12 months) and shall continue for successive periods equivalent to the minimum term until terminated by either party giving not less than 30 days’ notice to the other such notice expiring at the end of any such period.

## **D.3 Provision of Services**

**D.3.1** Firstserv agrees, in consideration of payment of the Service Charges and conditional upon The Customer’s compliance with this Agreement to provide in relation to the Customer Server at the Facility any or all of the following as and to the extent specified in the Service Order:

- (a) rack space exclusive to The Customer;
- (b) a connection to the Internet or network specified by the customer;
- (d) electricity and sockets as specified in the Service Order;
- (e) air-conditioning;
- (f) a quarter of an Hour per day of Remote Hands Assistance if specified in the Service Order;
- (g) telephone support pursuant to clause D.3.3; and
- (h) any other facilities (but no others) specified expressly in the Service Order.

**D.3.2** The precise scope of the Services (in particular, as to space quotas) shall be as specified in the Service Order or the Sales Quotation.

**D.3.3** Firstserv shall provide telephone support relating to the Server or other equipment of Firstserv as detailed in the Service Order. Telephone support does not include support in relation to the operation of The Customer’s own website and related software or programming support unless defined separately.

## **D.4 Exclusions**

**D.4.1** Firstserv does not and cannot control the performance of any data, products, or service(s) controlled by third parties. At times action or inaction by third parties can impair or disrupt Service(s). Firstserv makes no representations and expressly disclaims all warranties regarding any data, products, or service(s) controlled by any third party, including the providers of telecommunications or network products or services. Such data, products, and services are not promised to be free of error or interruption, and Firstserv expressly disclaims all liabilities arising from any such error, interruption, or other failure.



**D.4.2** Routine maintenance and periodic system repairs, upgrades, and reconfigurations of the Facility (together, "Maintenance") may result in temporary impairment or interruption in Services. As a result, Firstserv does not warrant or guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Services, in which circumstances it will give The Customer as much notice as reasonably practicable. Firstserv shall use all reasonable endeavours to keep any downtime or disruption to access to a minimum.

**D.4.3** Firstserv shall have no responsibility for problems arising from The Customer's hardware, software or networks. If Firstserv agrees to perform any repairs to hardware located at the Facility, such repairs shall be Additional Services and charged accordingly.

**D.4.4** Firstserv does not validate Material supplied by The Customer and the provision of any Services by Firstserv shall not constitute a waiver of any of its rights under the Agreement or at law.

## **D.5 Customer Responsibilities**

**D.5.1** The Customer shall post to the Server only Material which is compatible with the Server and otherwise "server-ready" and which requires no manipulation by Firstserv.

**D.5.2** The Customer acknowledges that effective use of the Services requires knowledge on its part of hyper text language, file transfer protocols and other protocols, language and software which are not part of the Services and The Customer warrants and undertakes that it has, or will procure, expertise equivalent to that of a qualified and experienced web development service provider.

**D.5.3** The Customer warrants that all Material contained in or linked to any website owned or controlled by it and hosted by Firstserv pursuant to the Services and its use of the Services:

**D.5.3.1** is free from Inappropriate Material, whether such Material has been supplied by The Customer or a third party;

**D.5.3.2** does not infringe the Intellectual Property Rights of any third party in any jurisdiction where such Material may be accessed via its website; and

**D.5.3.3** is free from viruses, worms, Trojan horses and other harmful code.

**D.5.4** The Customer shall supply to Firstserv on demand all information required by Firstserv in order to provide the Services including without limitation:

**D.5.4.1** The Customer's full name, email address, telephone number and mailing address;

**D.5.4.2** The full name and full contact details (including mobile telephone number) of The Customer's representative appointed pursuant to clause A.12;

**D.5.4.3** any information required from time to time to keep the information required by this clause fully up to date and complete at all times.

**D.5.5** The Customer warrants that the information provided by it pursuant to clause D.5.4 is complete and accurate. The Customer acknowledges that the provision of any Services requiring notification to The Customer (such as monitoring services) is conditional upon Firstserv being in possession of an up to date email address and mobile telephone number for The Customer or its appointed representative.

**D.5.6** The Customer shall indemnify Firstserv against any claims, liabilities, losses, expenses (including legal fees) and costs which Firstserv incurs in connection with any breach by The Customer of its obligations in this clause D.5.

**D.5.7** Without limiting any other remedies available to it, Firstserv may at its sole discretion terminate or suspend the Service and The Customer's access to or use of any username, password or email address supplied by Firstserv, without notice or liability if it considers that The Customer is in breach of the Acceptable Use Policy or any other provision of this Agreement.

## **D.6 Colocation Services**

**D.6.1** The Customer acknowledges that the Customer Server is at The Customer's risk whilst at the Facility and accordingly The Customer shall insure the Customer Server against all relevant risks whilst at the Facility. The Customer's attention is drawn to clause A.9 of the General Terms and Conditions.

**D.6.2** The Customer shall:

**D.6.2.1** allow only those personnel whose names are listed in the Service Order or who have otherwise been notified to Firstserv (in accordance with this Agreement) to access the Facility;

**D.6.2.2** access only those parts of the Facility which have been made available to it by Firstserv and through or to which The Customer has been directed by Firstserv for the purposes of the Services;

**D.6.2.3** comply at all times, and procure that any person who obtains access to the Facility pursuant to The Customer's receipt of the Services complies at all times, with all security and safety policies and instructions of Firstserv;

**D.6.2.4** not abuse, damage or interfere with any equipment or other property of any third party or of Firstserv at the Facility nor otherwise engage in any anti-social or illegal behaviour at the Facility;

**D.6.2.5** keep The Customer's area of the Facility clean and in good order at all times;

**D.6.2.6** not store in the Customer's area of the Facility any equipment, materials or other property which are not listed in the Service Order or which Firstserv has not consented in writing to be stored at the Facility;

**D.6.2.7** if required by Firstserv, label the Customer Server with such identification codes as Firstserv specifies;

**D.6.2.8** install, configure and use the Customer Server at all times strictly in accordance with the manufacturer's specifications; and

**D.6.2.9** give Firstserv not less than 48 Hours' notice of any intended connection or disconnection of the Customer Server.

**D.6.3** Firstserv reserves the right to disconnect the Customer Server from the Internet without notice if the Customer Server is causing disruption to the networks of Firstserv or of any third party.

## **D.7 Price and Payment**

**D.7** The Service Charges shall be as specified in the applicable Service Order or Sales Quotation and shall be paid in accordance with clause A.4 and the Service Order.

## **D.8 Excess data transfers**

**D.8.1** The Customer shall observe any limitations on data transfer according to the Service Order and, if it exceeds such limits at any time, The Customer shall pay for such excess data transfer at Firstserv's then current rates.

**D.8.2** Firstserv shall have no liability for failure to achieve any service levels or to provide the Services which is caused by a breach by The Customer of this clause.

**D.9 Service Levels**

**D.9.1** Firstserv undertakes to use all reasonable endeavours to ensure that, subject to the terms of the Agreement, the web hosting Services will be available for not less than the percentage of time per calendar month specified in D9.3.

**D.9.2** If in any calendar month the availability specified in clause D.9.1 is not achieved, The Customer, as its sole remedy in respect of such non-availability, shall be entitled to service credits calculated in accordance with the Service Order which may be set off against the price of future Services.

**D.9.3.2.1** Planned outages. All work for the purpose of maintenance or support as part of Planned Outages will take place outside Business Hours. Planned Outages will be notified to you wherever possible on five (5) days prior notice unless otherwise agreed or in case of emergency. We shall wherever possible ensure that there are no more than two (2) Planned Outages each calendar month.

**D.9.3.2.2** Availability. Availability is calculated at the end of each month in accordance with the following formula:

Where:

"A": means the Availability of the Service (expressed as a percentage).

"D": means Downtime in the respective month - expressed in minutes.

"T": means the total number of Service Minutes in the respective month.

**D.9.3.2.3** Calculation of Downtime. Downtime is calculated from the time of notification of a fault by either you or us, and ends when the Service is restored to full working order as determined and certified by us. However, Downtime is to be disregarded to the extent it is attributable to your failing to keep equipment in standard office environment levels of humidity and temperature, or to any other abuse, misuse or modification of equipment or software by you.

**D.9.3.3 Compensation calculations**

**D.9.3.3.1** If Availability falls below the guaranteed levels in any particular month then we shall credit you by reference to the following table:

<b>MONTHLY NETWORK AVAILABILITY</b>	<b>REIMBURSEMENT OF THE MONTHLY SERVICE FEE</b>
<b>(EXPRESSED AS A PERCENTAGE)</b>	<b>(EXPRESSED AS A PERCENTAGE)</b>
99.00 - 99.89	5%
97.00 - 98.99	10%
95.00 - 96.99	15%

90.00 - 94.99	20%
Under 89.99	25%

#### D.9.3.4 Fault monitoring and resolution

D.9.3.4.1 Firstserv is responsible for recording Availability, Planned and unplanned Outages and fault resolution time scales.

D.9.3.4.2 Firstserv shall be notified of faults using only the following methods:

- By emailing [auto-support@firstserv.com](mailto:auto-support@firstserv.com), including the contact name, contact number and a description of the problem, or,
- Calling Firstserv Support on +44 20 7871 5515

At the time of notification of a fault, we will assign a priority to the fault in accordance with the priority classifications set out below, by agreement with you.

#### D.9.3.5 Fault priority

D.9.3.5.1 Problems will be classified by us in accordance with the following table:

PRIORITY CLASSIFICATION	DESCRIPTION
Priority 1 Faults	System non-functional with high impact on operations.
Priority 2 Faults	System partially usable with medium impact on operations, or a Priority 1 Fault to which a temporary work around has been applied.
Priority 3 Faults	Minor problems with very low impact on operations.
Priority 4 Faults	Documentation errors.

#### D.9.3.6 Fault resolution process

D.9.3.6.1 We will initially attempt to qualify the suspected fault as an actual fault and will require you to perform checks and tests to further isolate the suspected fault at this time and at other times during the resolution process.

D.9.3.6.2 Where further checks are inconclusive or are liable to affect live operation, we shall attempt to replicate and test the suspected fault internally.

D.9.3.6.3 We shall make best endeavours to fix or provide a work around to any problem that will not affect the functionality or performance or Availability of the Service in the following time scales:

PRIORITY	INITIAL TIME TO RESPOND	TIME TO RESOLUTION
Priority 1 Faults	15 minutes	4 hours

Priority 2 Faults	180 minutes	24 hours
Priority 3 Faults	24 hours	3 days
Priority 4 Faults	48 hours	30 days

#### **D.9.3.7 Facility access**

24 hour access to the hosting facility is provided. Prior notification must be made either by email to support@firstserv.com during normal working hours or to the 24 hour Network Operations Centre pager number as supplied in 4.2 above. Access rights will be provided within 3 hours of a request being made. Customers holding PAC tags do not need to notify the support centre prior to access.

#### **D.9.3.8 Remote Hands Assistance**

**D.9.3.8.1** Remote Hands Assistance, if relevant, includes assistance of the following kind:

1. Pushing a button, switching a toggle or setting a dip-switch.
2. Reboot/power cycle of equipment as required.
3. Securing cabling to connections.
4. Observing, describing or reporting on indicator lights or display information on machines or consoles.
5. Modifying basic cable layout.
6. Cable patching.
7. Checking alarms for faults.
8. Changing faulty plug in cards and hard drives.
9. Any configuration or installation work as long as the customer is able to provide either full verbal or written step by step instructions.
10. Perform basic customer-led fault finding on customer equipment.

## **Section E - Domain Name Registration Services Terms and Conditions**

The document entitled "Section A – General Terms and Conditions" shall govern the parties' relationship under these Special Terms and Conditions: if there is a direct conflict between these Special Terms and Conditions and the General Terms and Conditions, these Special Terms and Conditions shall take precedence.

### **E.1 Definitions**

In these Special Terms and Conditions Section E, the following terms shall have the meanings given to them below:

"Domain Name Registration Services" means the Services described in clause E.3.

"Name" means any name specifically requested by or allocated to The Customer by Firstserv for the provision of the Services including without limitation any domain name or electronic mailbox name.

"Registrar" means the registry administrator or registrar used by Firstserv for domain name registration.



Other defined terms in these Special Terms and Conditions Section E shall have the meanings given to them in the General Terms and Conditions.

## **E.2 Duration and Renewals**

**E.2.1** This Agreement shall commence on the Commencement Date and remain in force until the earlier of (i) transfer by The Customer of the registration of the Name to a registrar other than the Registrar, and (ii) earlier termination in accordance with this Agreement.

**E.2.2** Firstserv shall use its reasonable endeavours to send renewal reminders in writing in advance of any date for renewal of registration of a Name but Firstserv shall have no responsibility to renew or liability for failure to renew the registration of any Name unless it has received notice from The Customer so to do together with payment of all outstanding Service Charges before the renewal date.

## **E.3 Duration and Renewals**

### **E.3 Domain Name Registration**

**E.3.1** Firstserv agrees, in consideration of payment of the Service Charges and conditional upon The Customer's compliance with this Agreement, to apply on The Customer's behalf to the agreed Registrar for registration by such Registrar of the Name and to maintain such registration on The Customer's behalf until the next following renewal date. Firstserv shall use reasonable endeavours to notify The Customer of renewal dates, but shall not renew the registration of any Name without The Customer's written instructions to do so and payment of any applicable Service Charges.

**E.3.2** Firstserv does not guarantee the registration of any Name the subject of an application to a Registrar and The Customer acknowledges that no registration fees or Service Charges are refundable in the event of rejection by any Registrar of an application for registration of any Name.

**E.3.3** Registration of a Name is at all times subject to any rules and terms and conditions of the applicable Registrar, with which The Customer shall comply at all times. Firstserv shall have no liability for any suspension or cancellation of a Name registration which is caused by The Customer's breach of this clause or which is effected by the applicable Registrar for any reason whatsoever, or for any challenge to a Name registration by any person.

**E.3.4** The Customer is advised not to take any action dependent upon registration of the Name with any particular Registrar until actual registration has been confirmed by Firstserv and Firstserv shall have no liability to The Customer for any action so taken.

## **E.4 Exclusions**

**E.4.1** Firstserv does not and cannot control the performance of any data, products, or service(s) controlled by third parties. At times action or inaction by third parties can impair or disrupt Service(s). Firstserv makes no representations and expressly disclaims all warranties regarding any data, products, or service(s) controlled by any third party. Such data, products, and services are not promised to be free of error or interruption, and Firstserv expressly disclaims all liabilities arising from any such error, interruption, or other failure.

**E.4.2** Firstserv shall have no liability to The Customer for any infringement of Intellectual Property Rights or other damage, liability, loss, cost or expense whatsoever and howsoever arising in relation to Firstserv's registration of the Name in accordance with the Agreement.

## **E.5 Customer Responsibilities**



**E.5.1** The Customer shall supply to Firstserv on demand all information required by Firstserv in order to provide the Domain Name Registration Services including without limitation:

**E.5.1.1** The Customer's preferred Name and the name of the person to be registered as the owner of the Name;

**E.5.1.2** The Customer's (or relevant domain name holder's, if different) full name, email address, telephone number and mailing address;

**E.5.1.3** The name and full contact details (including email address) of The Customer's representative appointed pursuant to clause A.12;

**E.5.1.4** any information required from time to time to keep the information required by this clause fully up to date and complete at all times.

**E.5.2** The Customer warrants that the information provided by it pursuant to clause E.5.1 is complete and accurate. The Customer acknowledges that the provision of the Services is conditional upon Firstserv being in possession of an up to date email address and mobile telephone number for The Customer or its appointed representative.

**E.5.3** The Customer warrants that the Name and all use thereof :

**E.5.3.1** is free from Inappropriate Material, whether such Material has been supplied, or such use has been effected, by The Customer or a third party; and

**E.5.3.2** does not infringe the Intellectual Property Rights of any third party in any jurisdiction where such Material may be accessed via its website or by use of the Name.

**E.5.4** The Customer shall indemnify Firstserv against any claims, liabilities, losses, expenses (including legal fees) and costs which Firstserv incurs in connection with any breach by The Customer of its obligations in this clause E.5 or arising out of or relating to the registration of the Name, or its renewal or pre-registration, or to The Customer's use of the domain name.

**E.5.5** The Customer shall notify Firstserv in good time before any renewal date if it wishes Firstserv to renew its registration with any Registrar of a Name.

## **E.6 Price and Payment**

**E.6.1** The Domain Name Registration Service Charges shall be as specified in the applicable Service Order or Sales Quotation.

**E.6.2** Service Charges for Domain Name Registration shall be paid by The Customer in advance and are non-refundable, whether in the event of cancellation, refusal or transfer of registration at any time or otherwise.

## **E.7 Variations**

**E.7** Firstserv reserves the right to update these Special Terms and Conditions by notice to The Customer from time to time.

## **E.8 Domain Name Disputes**

**E.8.1** Firstserv shall have no liability to The Customer in respect of any dispute between The Customer and any third party regarding any Name or registration of any Name. Firstserv may, if it becomes aware of any such dispute, take such action as it considers reasonable to protect its legitimate interests, including without limitation, suspending the Services and making representations to any Registrar.



**E.8.2** The Customer shall indemnify Firstserv against any liability, loss, claim or expense (including legal fees) incurred by Firstserv in relation to any dispute between The Customer and a third party in relation to any Name.

**E.8.3** The Customer acknowledges that no part of the Services confers immunity from objection to the pre-registration, registration or use of the Name.

### **E.9 Use and Ownership of Data**

**E.9.1** Firstserv may provide any information regarding the Domain Name Registration Services which is required by an industry body (such as ICANN) or regulatory authority or to any other person as required by law or industry regulation. The Customer hereby irrevocably consents to the use for such purposes (and for Firstserv's internal business purposes) of all data provided by The Customer.

**E.9.2** All Intellectual Property Rights in data generated by Firstserv in the course of the Domain Name Registration Services (other than the Name) shall be and remain the absolute property of Firstserv.

### **E.10 Transfer of Domain Name**

**E.10.1** Firstserv shall, at the request of The Customer and subject to receipt of payment of all Service Charges, apply on The Customer's behalf for a transfer of the registration of the Name to a third party.

**E.10.2** The Customer shall notify Firstserv of any transfer or application to transfer the registration of the Name to a registrar other than the Registrar

### **E.11 Use of Data**

The Customer acknowledges that details of any registration effected pursuant to the Services, including without limitation identity and contact details of the owner of the Name, are or may be published by the Registrar on a public database and The Customer hereby irrevocably consents to Firstserv's communication of such information to the extent required for the purpose of providing the Services.

### **E.12 Compliance with Registration Agreement**

The Customer shall comply at all times with the obligations, if any, of the registered owner of the Name pursuant to any agreement for, or terms and conditions of, registration of the Name by or with the relevant Registrar, as the same may be updated or amended from time to time by the Registrar. This Agreement is subject to the terms and conditions of the Registrar and Firstserv may vary this Agreement from time to time to the extent necessary to comply with any such registration agreement.

## **Section F - Web Programming Services**

The document entitled "Section A – General Terms and Conditions" shall govern the parties' relationship under these Special Terms and Conditions: if there is a direct conflict between these Special Terms and Conditions and the General Terms and Conditions, these Special Terms and Conditions shall take precedence.

### **F.1 Definitions**

In these Special Terms and Conditions Section F, the following terms shall have the meanings given to them below:

"Acceptance Tests" means Firstserv's acceptance test as set out in the Project Specification.

"Bespoke Deliverables" means any software programme(s), manuals, content and other documentation or materials, created by Firstserv exclusively for The Customer in the course of performance of the Services."





“Bug” relates to a coding error in the application and does not relate to a usability issue.

“Deliverables” means the finished product produced pursuant to the performance of the Services, as described in the Project Specification.

“Development Server” means a server within the Firstserv domain situated within the Firstserv hosting facility which responds to a defined address for The Customer. This server will be used for Acceptance testing for all aspects of the Website Project except communications performance where this is required.

“Fee” means the fee for the Services.

“Firstserv Background” means all software applications and codes and other materials used in the performance of the Services, (including without limitation any back end technology of whatever type, software engines and development tools) and any other intellectual property not created specifically for The Customer in the course of provision of the Services.

“Project Specification” means a document which defines an appropriate level of detail for the Website Project to be implemented. The Project Specification will be produced in written and graphical form.

“Proposal” means Firstserv’s initial proposal for the Services, which is subject to variation by the Project Specification”.

“Third Party Materials” means any software programmes, applications, manuals, content and other documentation or materials used by Firstserv in the course of provision of the Services but created by a third party.

“Services” means the services to be performed by Firstserv as described in these Special Terms and Conditions Section F.

“Website” means The Customer’s website in relation to which the Services will be performed, having the URL specified in the Project Specification.

“Website Project” means all or a defined part of the Website defined within a named Firstserv proposal.

Other defined terms in these Special Terms and Conditions Section F shall have the meanings given to them in the General Terms and Conditions.

## **F.2 Scope of Services**

**F.2.1** In consideration for the payment by The Customer of the Fee, Firstserv shall:

**F.2.1.1** assign a project manager who will discuss The Customer’s requirements as outlined in the Proposal and develop a Project Specification which will include the Acceptance Tests. The Project Specification will be sent to The Customer for approval, (which approval shall not be unreasonably delayed or withheld). For the avoidance of doubt work on the Website Project will cease until a signed copy of the Project Specification is returned to Firstserv.

**F.2.1.2** where appropriate establish a development environment for the Website Project on a Development Server and check that The Customer can access the Server.

**F.2.1.3** where appropriate develop demonstration version(s) of the Website Project on the Development Server as outlined in the Proposal for approval by The Customer (which approval shall not be unreasonably delayed or withheld).

**F.2.1.4** make such reasonable revisions to the demonstration version of the Website Project and the Project Specification as shall be requested by The Customer and agreed by Firstserv to produce a final Project



Specification. Should The Customer request revisions of the Website Project or Project Specification then Firstserv reserve the right to revise the Fee and delivery dates of these Special Terms and Conditions Section F and these revisions will be subject to authorisation by The Customer.

**F.2.1.5** develop the Website Project according to the final Project Specification such that it will pass the Acceptance Tests.

**F.2.1.6** test the Website in accordance with the Acceptance Tests. For the avoidance of doubt, the Acceptance Tests test systems such as, but not limited to, navigation and administration. If static content has not been supplied by The Customer, sample content will be used and the Website Project can still meet the Acceptance Tests.

**F.2.1.7** notify The Customer when the Website Project passes the Acceptance Tests and is ready for release approval by The Customer.

**F.2.2** On receipt of The Customer's written approval, (which approval shall not be unreasonably delayed or withheld and shall be deemed to have been given 14 days after the Website Project passes the Acceptance Tests), Firstserv shall make such reasonable revisions to the development version of the Website as are required for launch.

**F.2.3** On receipt of The Customer's written approval, (which approval shall not be unreasonably delayed or withheld), Firstserv will notify The Customer that the Website is ready to be transferred to the live host server(s) and will transfer the Website to the live server(s).

### **F.3 Retention And Transfer Of Rights**

**F.3.1** All Intellectual Property Rights in any materials supplied by The Customer shall remain the absolute property of The Customer which hereby grants Firstserv a non-exclusive and royalty-free licence to use the same for the purposes of this Agreement.

**F.3.2** To the extent that the Deliverables contain Bespoke Deliverables, Firstserv shall, upon payment by The Customer of the Fee in full and cleared funds, assign to The Customer all Intellectual Property Rights held by Firstserv in such Bespoke Deliverables, by executing an assignment in a form acceptable to Firstserv.

**F.3.3** To the extent that the Deliverables contain Third Party Materials, The Customer shall comply with the terms of any licence accompanying any such Third Party Materials and shall, subject thereto and to payment of the Fee, have the benefit of a non-exclusive licence to use the Third Party Materials for the purposes of operating and developing the Website.

**F.3.4** To the extent that the Deliverables contain Firstserv Background, Firstserv hereby grants The Customer, subject to payment in full and cleared funds of the Fee, a non-exclusive, royalty-free licence and perpetual licence to use such Firstserv Background for the purposes of operating and developing the Website.

### **F.4 Delivery Dates**

**F.4.1** The dates provided within the Project Specification assume that all reasonable requests by Firstserv to The Customer for, but not limited to, content, clarification or approval are handled within 2 working days.

**F.4.2** Should The Customer be unable to meet requests in accordance with clause F4.1, Firstserv reserves the right to change the delivery dates and Fees.

**F.4.3** Firstserv shall use all reasonable endeavours to meet the delivery dates provided in the Project Specification.

### **F.5 Management/ Support And Maintenance Services**



**F.5.1** In consideration of the payment of the Fee, Firstserv shall manage The Customer's Website (on a basis as defined in this Service Order) (the "Management Services") during the term of this Agreement.

**F.5.2** Where The Customer's Website is being transferred from a third party, Firstserv will charge the adoption fee stated. For this fee, Firstserv will amend The Customer's Website such that it can be managed within Firstserv's quality procedures. This will include the insertion of source code control information such as version numbers. A copyright statement will also be inserted into every file. By default this will list Firstserv as controlling copyright (on The Customer's behalf). The Customer must provide alternative copyright information in writing prior to the adoption process should they require other information to be shown.

**F.5.3** The Support and Maintenance services shall comprise routine and emergency maintenance and support including Bug fixes relating to the operation of the Website on the Firstserv server for the Man hours per calendar month, with the agreed response time as shown in the Project Specification. Additional time shall be chargeable at Firstserv's then applicable rates and payable monthly in arrears. The Support and Maintenance Services shall only comprise remedial and corrective services and static content additions of updates; enhancements and development services shall be dealt with under a separate contract.

**F.5.4** Firstserv reserves the right to alter or vary the Management Services, including for the avoidance of doubt, as a consequence of changes in or variations made by its Third Party Suppliers, provided always that any such alteration or variation shall not materially affect the Management Services that were prior to the alteration or variation provided to The Customer and provided always that it shall, where practicable, provide the Customer with not less than one month's prior written notice of its intention to vary the same.

## **F.6 Duration**

This Agreement shall commence on the Commencement Date and remain in force for the agreed minimum term as set out in the Service Order (or if no such period is specified, for 12 months) and shall continue for successive periods equivalent to the minimum term until terminated by either party giving not less than thirty (30) days' written notice to the other such notice expiring at the end of any such period.

## **F.7 Price and Payment**

The Service Charges shall be as specified in the Service Order or Sales Quotation and shall be paid in accordance with clause A.4.

## **Section G - Virtual VMware Services**

The document entitled "Section A – General Terms and Conditions" shall govern the parties' relationship under these Special Terms and Conditions: if there is a direct conflict between these Special Terms and Conditions and the General Terms and Conditions, these Special Terms and Conditions shall take precedence

### **G.1 Definitions**

In these Special Terms and Conditions Section G, the following terms shall have the meanings given to them below:

"Availability" means the availability of our network demonstrated by means of either a ping or traceroute program.

"Business Hours" means 09.30 a.m. to 5.30 p.m. on a day other than a Saturday, Sunday, bank or other public holiday in England and Wales.



“Downtime” means in respect of any month the total time during which the Service is not Available (other than as a result of Planned Outages).

“Facility” means any hosting facility supplied by Firstserv pursuant to the Services at the premises specified in the Service Order.

“Hour(s)” means 60 minutes during Firstserv’s normal business hours (being 9.30am to 5.30pm, Monday to Friday, excluding weekends and UK bank or public holidays).

“Outage” means any period during which any user cannot process an application transaction or send or receive e-mails utilising the Service.

“Planned Outage” means any period during which any user cannot process an application transaction or send or receive e-mails utilising the Service caused by work for the purpose of maintenance or support.

“Server” means any computer server equipment operated by Firstserv in connection with the provision of the Services.

“Service Minutes” means minutes of connectivity to Firstserv.

Other defined terms in these Special Terms and Conditions Section G. shall have the meanings given to them in the General Terms and Conditions.

## **G.2 Duration**

This Agreement shall commence on the Commencement Date and remain in force for the agreed minimum term as set out in the Service Order (or if no such period is specified, for 1 month) and shall continue for successive periods equivalent to the minimum term until terminated by either party giving not less than thirty (30) days’ written notice to the other such notice expiring at the end of any such period.

## **G.3 Provision of Services**

**G.3.1** Firstserv agrees, in consideration of payment of the Service Charges and conditional upon The Customer’s compliance with this Agreement to make a virtual server available to The Customer.

**G.3.2** The precise scope of the Services (in particular, as to space quotas) shall be as specified in the Service Order or the Sales Quotation.

**G.3.3** Firstserv shall provide telephone and email support relating to the Server or other equipment of Firstserv as detailed in the Service Order. Telephone and email support does not include support in relation to the operation of The Customer’s own website and related software or programming support.

## **G.4 Exclusions**

**G.4.1** Firstserv does not and cannot control the performance of any data, products, or service(s) controlled by third parties. At times action or inaction by third parties can impair or disrupt Service(s). Firstserv makes no representations and expressly disclaims all warranties regarding any data, products, or service(s) controlled by any third party, including the providers of telecommunications or network products or services. Such data, products, and services are not promised to be free of error or interruption, and Firstserv expressly disclaims all liabilities arising from any such error, interruption, or other failure.

**G.4.2** Routine maintenance and periodic system repairs, upgrades, and reconfiguration of the Server and/or the Facility (together, “Maintenance”) may result in temporary impairment or interruption in Services. As a result,

Firstserv does not warrant or guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Services, in which circumstances it will give The Customer as much notice as reasonably practicable. Firstserv shall use all reasonable endeavours to keep any downtime or disruption to access to a minimum.

**G.4.3** Firstserv does not validate Material (i.e. data) supplied by The Customer and the provision of any Services by Firstserv shall not constitute a waiver of any of its rights under the Agreement or at law.

## **G.5 Customer Responsibilities**

**G.5.1** The Customer shall post to the Server only Material which is compatible with the Server and otherwise “server-ready” and which requires no manipulation by Firstserv.

**G.5.2** The Customer acknowledges that effective use of the Services requires knowledge on its part of hyper text language, file transfer protocols and other protocols, language and software which are not part of the Services and The Customer warrants and undertakes that it has, or will procure, expertise equivalent to that of a qualified and experienced web development service provider.

**G.5.3** The Customer warrants that all Material contained in or linked to any website owned or controlled by it and hosted by Firstserv pursuant to the Services and its use of the Services:

**G.5.3.1** is free from Inappropriate Material, whether such Material has been supplied by The Customer or a third party;

**G.5.3.2** does not infringe the Intellectual Property Rights of any third party in any jurisdiction where such Material may be accessed via its website; and

**G.5.3.3** is free from viruses, worms, Trojan horses and other harmful code.

**G.5.4** The Customer shall supply to Firstserv on demand all information required by Firstserv in order to provide the Services including without limitation:

**G.5.4.1** The Customer's full name, email address, telephone number and mailing address;

**G.5.4.2** The full name and full contact details (including mobile telephone number) of The Customer's representative appointed pursuant to clause A.12;

**G.5.4.3** any information required from time to time to keep the information required by this clause fully up to date and complete at all times.

**G.5.5** The Customer warrants that the information provided by it pursuant to clause G.5.4 is complete and accurate. The Customer acknowledges that the provision of any Services requiring notification to The Customer (such as monitoring services) is conditional upon Firstserv being in possession of an up to date email address and mobile telephone number for The Customer or its appointed representative.

**G.5.6** The Customer shall indemnify Firstserv against any claims, liabilities, losses, expenses (including legal fees) and costs which Firstserv incurs in connection with any breach by The Customer of its obligations in this clause G.5.

**G.5.7** Without limiting any other remedies available to it, Firstserv may at its sole discretion terminate or suspend the Service and The Customer's access to or use of any username, password or email address supplied by Firstserv, without notice or liability if it considers that The Customer is in breach of the Acceptable Use Policy or any other provision of this Agreement.



## G.6 Price and Payment

The Service Charges shall be as specified in the applicable Service Order or Sales Quotation and shall be paid in accordance with clause A.4 and the Service Order.

## G.7 Excess data transfers

**G.7.1** The Customer shall observe any limitations on data transfer according to the Service Order and, if it exceeds such limits at any time, The Customer shall pay for such excess data transfer at Firstserv's then current rates.

**G.7.2** Firstserv shall have no liability for failure to achieve any service levels or to provide the Services which is caused by a breach by The Customer of this clause.

## G.8 Service Levels

**G.8.1** Firstserv undertakes to use all reasonable endeavours to ensure that, subject to the terms of this Agreement, the Services will be available for not less than the percentage per calendar month specified in G.8.3.

**G.8.2** If in any calendar month the availability specified in clause G.8.1 is not achieved, The Customer, as its sole remedy in respect of such non-availability, shall be entitled to service credits calculated in accordance with G.8.3.2.2 which may be set off against the price of future Services.

**G.8.3.2.1** Planned outages. All work for the purpose of maintenance or support as part of Planned Outages will take place outside Business Hours. Planned Outages will be notified to you wherever possible on five (5) days prior notice unless otherwise agreed or in case of emergency. Firstserv shall wherever possible ensure that there are no more than two (2) Planned Outages each calendar month.

**G.8.3.2.2** Availability. Availability is calculated at the end of each month in accordance with the following formula:

Where:

"A": means the Availability of the Service (expressed as a percentage).

"D": means Downtime in the respective month - expressed in minutes.

"T": means the total number of Service Minutes in the respective month.

**G.8.3.2.3** Calculation of Downtime. Downtime is calculated from the time of notification of a fault by either you or us, and ends when the Service is restored to full working order as determined and certified by us. However, Downtime is to be disregarded to the extent it is attributable to your failing to keep equipment in standard office environment levels of humidity and temperature, or to any other abuse, misuse or modification of equipment or software by you.

### G.8.3.3 Compensation calculations

**G.8.3.3.1** If Availability falls below the guaranteed levels in any particular month then we shall credit you by reference to the following table. Note that uptime relates to network and hardware availability only.

MONTHLY NETWORK AND HARDWARE AVAILABILITY	REIMBURSEMENT OF THE MONTHLY SERVICE FEE
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(EXPRESSED AS A PERCENTAGE)	(EXPRESSED AS A PERCENTAGE)
99.00 - 99.998	5%
97.00 - 98.999	10%
95.00 - 96.999	15%
90.00 - 94.999	20%
Under 89.999	25%

#### G.8.3.4 Fault monitoring and resolution

**G.8.3.4.1** Firstserv is responsible for recording Availability, Planned and unplanned Outages and fault resolution time scales.

**G.8.3.4.2** Firstserv shall be notified of faults using only the following methods:

1. By emailing [auto-support@firstserv.com](mailto:auto-support@firstserv.com), including the contact name, contact number and a description of the problem, or,
2. Calling Firstserv Server Support on +44 20 7871 5515

At the time of notification of a fault, we will assign a priority to the fault in accordance with the priority classifications set out below, by agreement with you.

#### G.8.3.5 Fault priority

**G.8.3.5.1** Problems will be classified by us in accordance with the following table:

PRIORITY CLASSIFICATION	DESCRIPTION
Priority 1 Faults	System non-functional with high impact on operations.
Priority 2 Faults	System partially usable with medium impact on operations, or a Priority 1 Fault to which a temporary work around has been applied.
Priority 3 Faults	Minor problems with very low impact on operations.
Priority 4 Faults	Documentation errors.

#### G.8.3.6 Fault resolution process

**G.8.3.6.1** We will initially attempt to qualify the suspected fault as an actual fault and will require you to perform checks and tests to further isolate the suspected fault at this time and at other times during the resolution process.

**G.8.3.6.2** Where further checks are inconclusive or are liable to affect live operation, we shall attempt to replicate and test the suspected fault internally.

**G.8.3.6.3** We shall make reasonable endeavours to fix or provide a work around to any problem that will not affect the functionality or performance or Availability of the Service in the following time scales:

<b>PRIORITY</b>	<b>INITIAL TIME TO RESPOND</b>	<b>TIME TO RESOLUTION</b>
Priority 1 Faults	15 minutes	4 hours
Priority 2 Faults	3 hours	24 hours
Priority 3 Faults	24 hours	3 days
Priority 4 Faults	48 hours	30 days

## **Section H – Virtuozzo VPS Server**

The document entitled “Section A – General Terms and Conditions” shall govern the parties’ relationship under these Special Terms and Conditions: if there is a direct conflict between these Special Terms and Conditions and the General Terms and Conditions, these Special Terms and Conditions shall take precedence.

### **H.1 Definitions**

In these Special Terms and Conditions Section H, the following terms shall have the meanings given to them below:

“Availability” means the availability of our network demonstrated by means of either a ping or traceroute program.

“Business Hours” means 09.30 a.m. to 5.30 p.m. on a day other than a Saturday, Sunday, bank or other public holiday in England and Wales.

“Downtime” means in respect of any month the total time during which the Service is not Available (other than as a result of Planned Outages).

“Facility” means any hosting facility supplied by Firstserv pursuant to the Services at the premises specified in the Service Order.

“Hour(s)” means 60 minutes during Firstserv’s normal business hours (being 9.30am to 5.30pm, Monday to Friday, excluding weekends and UK bank or public holidays).

“Outage” means any period during which any user cannot process an application transaction or send or receive e-mails utilising the Service.

“Planned Outage” means any period during which any user cannot process an application transaction or send or receive e-mails utilising the Service caused by work for the purpose of maintenance or support.

“Server” means any computer server equipment operated by Firstserv in connection with the provision of the Services.

“Service Minutes” means minutes of connectivity to Firstserv.

“Virtuozzo VPS” means the Virtual Private Server service using Parallels Virtuozzo software

Other defined terms in these Special Terms and Conditions Section H. shall have the meanings given to them in the General Terms and Conditions.





## **H.2 Duration**

This Agreement shall commence on the Commencement Date and remain in force for the agreed minimum term as set out in the Service Order (or if no such period is specified, for 1 month) and shall continue for successive periods equivalent to the minimum term until terminated by either party giving not less than thirty (30) days' written notice to the other such notice expiring at the end of any such period.

## **H.3 Provision of Services**

**H.3.1** Firstserv agrees, in consideration of payment of the Service Charges and conditional upon The Customer's compliance with this Agreement to make a Virtuozzo VPS server available to The Customer.

**H.3.2** The precise scope of the Services (in particular, as to space quotas) shall be as specified in the Service Order or the Sales Quotation.

**H.3.3** Firstserv shall provide telephone and email support relating to the Server or other equipment of Firstserv as detailed in the Service Order. Telephone and email support does not include support in relation to the operation of The Customer's own website and related software or programming support.

## **H.4 Exclusions**

**H.4.1** Firstserv does not and cannot control the performance of any data, products, or service(s) controlled by third parties. At times action or inaction by third parties can impair or disrupt Service(s). Firstserv makes no representations and expressly disclaims all warranties regarding any data, products, or service(s) controlled by any third party, including the providers of telecommunications or network products or services. Such data, products, and services are not promised to be free of error or interruption, and Firstserv expressly disclaims all liabilities arising from any such error, interruption, or other failure.

**H.4.2** Routine maintenance and periodic system repairs, upgrades, and reconfiguration of the Server and/or the Facility (together, "Maintenance") may result in temporary impairment or interruption in Services. As a result, Firstserv does not warrant or guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Services, in which circumstances it will give The Customer as much notice as reasonably practicable. Firstserv shall use all reasonable endeavours to keep any downtime or disruption to access to a minimum.

**H.4.3** Firstserv does not validate Material (i.e. data) supplied by The Customer and the provision of any Services by Firstserv shall not constitute a waiver of any of its rights under the Agreement or at law.

## **H.5 Customer Responsibilities**

**H.5.1** The Customer shall post to the Server only Material which is compatible with the Server and otherwise "server-ready" and which requires no manipulation by Firstserv.

**H.5.2** The Customer acknowledges that effective use of the Services requires knowledge on its part of hyper text language, file transfer protocols and other protocols, language and software which are not part of the Services and The Customer warrants and undertakes that it has, or will procure, expertise equivalent to that of a qualified and experienced web development service provider.

**H.5.3** The Customer warrants that all Material contained in or linked to any website owned or controlled by it and hosted by Firstserv pursuant to the Services and its use of the Services:



**H.5.3.1** is free from Inappropriate Material, whether such Material has been supplied by The Customer or a third party;

**H.5.3.2** does not infringe the Intellectual Property Rights of any third party in any jurisdiction where such Material may be accessed via its website; and

**H.5.3.3** is free from viruses, worms, Trojan horses and other harmful code.

**H.5.4** The Customer shall supply to Firstserv on demand all information required by Firstserv in order to provide the Services including without limitation:

**H.5.4.1** The Customer's full name, email address, telephone number and mailing address;

**H.5.4.2** The full name and full contact details (including mobile telephone number) of The Customer's representative appointed pursuant to clause A.12;

**H.5.4.3** any information required from time to time to keep the information required by this clause fully up to date and complete at all times.

**H.5.5** The Customer warrants that the information provided by it pursuant to clause H.5.4 is complete and accurate. The Customer acknowledges that the provision of any Services requiring notification to The Customer (such as monitoring services) is conditional upon Firstserv being in possession of an up to date email address and mobile telephone number for The Customer or its appointed representative.

**H.5.6** The Customer shall indemnify Firstserv against any claims, liabilities, losses, expenses (including legal fees) and costs which Firstserv incurs in connection with any breach by The Customer of its obligations in this clause H.5.

**H.5.7** Without limiting any other remedies available to it, Firstserv may at its sole discretion terminate or suspend the Service and The Customer's access to or use of any username, password or email address supplied by Firstserv, without notice or liability if it considers that The Customer is in breach of the Acceptable Use Policy or any other provision of this Agreement.

## **H.6 Price and Payment**

The Service Charges shall be as specified in the applicable Service Order or Sales Quotation and shall be paid in accordance with clause A.4 and the Service Order.

## **H.7 Excess data transfers**

**H.7.1** The Customer shall observe any limitations on data transfer according to the Service Order and, if it exceeds such limits at any time, The Customer shall pay for such excess data transfer at Firstserv's then current rates.

**H.7.2** Firstserv shall have no liability for failure to achieve any service levels or to provide the Services which is caused by a breach by The Customer of this clause.

## **H.8 Service Levels**

**H.8.1** Firstserv undertakes to use all reasonable endeavours to ensure that, subject to the terms of this Agreement, the Services will be available for not less than the percentage per calendar month specified in H.8.3.

**H.8.2** If in any calendar month the availability specified in clause H.8.1 is not achieved, The Customer, as its sole remedy in respect of such non-availability, shall be entitled to service credits calculated in accordance with H.8.3.2.2 which may be set off against the price of future Services.

**H.8.3.2.1** Planned outages. All work for the purpose of maintenance or support as part of Planned Outages will take place outside Business Hours. Planned Outages will be notified to you wherever possible on five (5) days prior notice unless otherwise agreed or in case of emergency. Firstserv shall wherever possible ensure that there are no more than two (2) Planned Outages each calendar month.

**H.8.3.2.2** Availability. Availability is calculated at the end of each month in accordance with the following formula:

Where:

“A”: means the Availability of the Service (expressed as a percentage).

“D”: means Downtime in the respective month - expressed in minutes.

“T”: means the total number of Service Minutes in the respective month.

**H.8.3.2.3** Calculation of Downtime. Downtime is calculated from the time of notification of a fault by either you or us, and ends when the Service is restored to full working order as determined and certified by us. However, Downtime is to be disregarded to the extent it is attributable to your failing to keep equipment in standard office environment levels of humidity and temperature, or to any other abuse, misuse or modification of equipment or software by you.

**H.8.3.3** Compensation calculations

**H.8.3.3.1** If Availability falls below the guaranteed levels in any particular month then we shall credit you by reference to the following table:

<b>MONTHLY NETWORK AVAILABILITY (EXPRESSED AS A PERCENTAGE)</b>	<b>REIMBURSEMENT OF THE MONTHLY SERVICE FEE (EXPRESSED AS A PERCENTAGE)</b>
99.00 - 99.50	5%
97.00 - 98.99	10%
95.00 - 96.99	15%
90.00 - 94.99	20%
Under 89.99	25%

**H.8.3.4** Fault monitoring and resolution

**H.8.3.4.1** Firstserv is responsible for recording Availability, Planned and unplanned Outages and fault resolution time scales.

**H.8.3.4.2** Firstserv shall be notified of faults using only the following methods:

1. By emailing [auto-support@firstserv.com](mailto:auto-support@firstserv.com), including the contact name, contact number and a description of the problem, or,
2. Calling Firstserv Server Support on +44 20 7871 5515

At the time of notification of a fault, we will assign a priority to the fault in accordance with the priority classifications set out below, by agreement with you.

### H.8.3.5 Fault priority

H.8.3.5.1 Problems will be classified by us in accordance with the following table:

PRIORITY CLASSIFICATION	DESCRIPTION
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Priority 3 Faults	Minor problems with very low impact on operations.
Priority 4 Faults	Documentation errors.

### H.8.3.6 Fault resolution process

H.8.3.6.1 We will initially attempt to qualify the suspected fault as an actual fault and will require you to perform checks and tests to further isolate the suspected fault at this time and at other times during the resolution process.

H.8.3.6.2 Where further checks are inconclusive or are liable to affect live operation, we shall attempt to replicate and test the suspected fault internally.

H.8.3.6.3 We shall make reasonable endeavours to fix or provide a work around to any problem that will not affect the functionality or performance or Availability of the Service in the following time scales:

PRIORITY	INITIAL TIME TO RESPOND	TIME TO RESOLUTION
Priority 1 Faults	15 minutes	4 hours
Priority 2 Faults	3 hours	24 hours
Priority 3 Faults	24 hours	3 days
Priority 4 Faults	48 hours	30 days