

## **Amicus Networks - Terms and conditions for "Internet Services"**

### **BETWEEN:**

**Amicus Networks [Limited]** of Regency House, 61a Walton Street, Walton-on-the-Hill, Surrey KT20 7RZ (Amicus Networks); and

### **Customer**

### **WHEREAS:-**

- (A) Amicus Networks carries on business as an internet service provider and the Customer wishes to receive certain services from Amicus Networks.
- (B) Amicus Networks is willing to provide the Services to the Customer and the parties have agreed to enter into such a relationship on the terms and conditions hereinafter contained.

### **WHEREBY IT IS AGREED:-**

#### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, the following expressions shall have the following meanings:-

"Contract Period"	The initial term of this Agreement as specified in the Order which may be extended or terminated in accordance with the provisions of this Agreement.
"Fault"	Any fault which results in the Services (or any part of them) becoming entirely unavailable to the Customer for any period of time.
"Fees"	The fees (including any VAT) due for the provision of the Services as calculated in accordance with the Price.
"Inappropriate Material"	Material that under the laws of any jurisdiction where the material can be accessed is any of the following:- unlawful, threatening, abusive, harmful, obscene, pornographic, malicious, profane, libelous, defamatory, infringes any Intellectual Property Rights, constitutes or encourages a criminal offence or contains a virus, worm, Trojan-horse or other harmful code.
"Intellectual Property Rights"	Copyrights, patents, domain names, database rights, registered and unregistered design rights, topography rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world.
"Material"	Text, graphics, images, sound, video or any combination thereof.
"Order"	An order on the electronic form provided by Amicus Networks or otherwise placed with Amicus Networks in writing by the Customer to indicate which Services it requires and its agreement to these terms and conditions governing such provision and which has been accepted by Amicus Networks in a written acknowledgement sent to the Customer.
"Planned Outage"	A scheduled period during which Amicus Networks or any other third party is carrying out any upgrade, repair and/or maintenance work to its systems and/or network and which will result in the Services (or any part of them) being temporarily unavailable to the Customer.
"Price "	The price for the Services quoted in writing to the Customer by Amicus Networks.
"Relevant Legislation"	Laws relating to data protection and any laws governing Inappropriate Material.
"Services"	The services identified on an Order to be provided by Amicus Networks to the Customer pursuant to this Agreement and any other Services which Amicus Networks agrees to provide to the Customer from time to time.
"Software"	Any Software made available by Amicus Networks to the Customer in connection with the provision of the Services.
"Amicus Networks's Website"	The Website located at <a href="http://www.amicusnetworks.co.uk">www.amicusnetworks.co.uk</a>

1.2 A reference to writing or written includes emails and faxes.

#### **2. PAYMENT AND SERVICES**

2.1 In consideration for the payment of the Fees calculated correctly in accordance with the Price stated on the Order completed by the Customer, Amicus Networks agrees to provide the Services upon and subject to the terms of this Agreement.

2.2 All Prices quoted by Amicus Networks shall be valid for thirty (30) days only from the date of the relevant quotation.

2.3 Amicus Networks will invoice the Customer for the Services on a monthly basis, unless otherwise specified on the Order or otherwise agreed in writing by Amicus Networks. The Customer agrees to make payment for the Services in accordance with the payment terms and frequency specified on the Order or, if not so

specified, within thirty (30) days of the date of Amicus Networks's invoice, unless otherwise agreed in writing by Amicus Networks. Payment can be made by bank transfer, CHAPS, BACS or direct debit or any other method of payment agreed in writing by Amicus Networks.

2.4 If Customer fails to pay any invoice which is due and payable under this Agreement, Amicus Networks shall be entitled to:

- 2.4.1 Suspend the related services, and only reinstate services once payment is made in
- 2.4.2 Charge a reconnection fee of up to 20% of the annual rental of the related services
- 2.4.3 Charge interest on a daily basis on the overdue amount and on the outstanding interest from the date of such failure until payment (both before and after judgment) at an annual rate of four per cent (4%) above the base rate for the time being in force of Barclays Bank plc.
- 2.4.4 Charge the Companies administration costs involved in recovering debt, per invoice.

2.5 Non-delivery or non-performance of services by any third party other than Amicus Networks's sub-contractors shall not give the Customer any right to delay any payment to Amicus Networks or to make any claim whatsoever against Amicus Networks.

2.6 If Amicus Networks does not receive payment in full when due Amicus Networks may terminate this Agreement immediately by written notice to the Customer as regards any Service without further obligation to the Customer.

2.7 For the purposes of this Agreement, time of payment is of the essence.

2.8 Amicus Networks shall be entitled to increase the Price by giving not less than thirty (30) days' written notice to the Customer in the event that Amicus Networks's cost of providing the Services is increased due to increases in rent, rates, taxes, service charges and/or utilities, and/or as a result of a change in applicable laws. In the event that the Customer does not wish to pay such increased charges then it shall within thirty (30) days of receipt of the relevant notice from Amicus Networks serve sixty (60) days' written notice to terminate the provision of the relevant Service. During such notice period, Amicus Networks shall not be entitled to charge the increased Price for the relevant Services.

### **3. INDEMNITY**

3.1 The Customer hereby agrees to fully indemnify, keep indemnified and hold harmless Amicus Networks, its officers, employees, agents, sub-contractors and affiliated companies from and against any and all costs, claims, losses, damages and expenses (including, but not limited to, legal fees) sustained or incurred by Amicus Networks and/or any of its officers, employees, agents, sub-contractors or affiliated companies directly or indirectly and in any jurisdiction as a result of:-

3.2 Any breach of any of the warranties given by the Customer in this Agreement;

3.3 Otherwise howsoever arising out of the provision by Amicus Networks of any Service hereunder unless on account of breach of contract or negligence by Amicus Networks; and/or

3.4 Any breach by the Customer of any of its obligations in this Agreement.

### **4. SERVICE OBLIGATION, WARRANTIES AND LIABILITY**

4.1 Amicus Networks shall not be liable for any interruptions to the Services or outages arising directly or indirectly from:-

- 4.1.1 Interruptions to the flow of data to or from the internet;
- 4.1.2 Changes, updates or repairs to the network or software which it uses as a platform to provide the Services subject to Amicus Networks using reasonable endeavours to minimise the interruptions/outages that may be caused by such change;
- 4.1.3 The effects of the failure or interruption of services provided by third parties;
- 4.1.4 Any actions or omissions of Customer (including, without limitation, breach of Customer's obligations set out in the Agreement) or any third parties;
- 4.1.5 Problems with Customer's equipment and/or third party equipment;
- 4.1.6 Customer requested interruptions to the Services.

4.2 Amicus Networks will not be liable for any indirect loss, consequential loss, loss of profit, revenue, data or goodwill howsoever arising suffered by the Customer or for any wasted management time, failure to make anticipated savings or liability of the Customer to any third party arising in any way in connection with this Agreement or otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.

4.3 Amicus Networks will use reasonable endeavours to provide a prompt and continual service, but will not be liable for any loss of data or service resulting from delays, non deliveries, missed deliveries, or service interruptions caused by errors or omissions of the Customer.

4.4 Save as expressly stated in this Agreement, all conditions and warranties whether express or implied, statutory or otherwise, in relation to any products and/or Services provided by Amicus Networks are hereby expressly excluded to the fullest extent permitted by law.

4.5 The transmission, storage, viewing and retrieval of data and files through the World Wide Web are subject to a variety of conditions that make such transmission, storage, viewing and retrieval potentially unreliable. Accordingly, the Customer's use of the Customer's account and the Services is at the Customer's sole risk. The Customer's account and the Services are provided to the Customer on an as is and as available basis.

4.6 Amicus Networks makes no representation or warranty that:

- 4.6.1 The Customer's account or the Services will meet the Customer's needs and/or will be compatible with the Customer's hardware and/or software systems;
- 4.6.2 Access to the Customer's account or the Services will be timely, error-free, uninterrupted, virus-free or secure;
- 4.6.3 The data and files the Customer stores in the Customer's account will not be lost or damaged;
- 4.6.4 The data on the Customer's desktop or server will not be lost or damaged; or
- 4.6.5 Defects in the Services will be corrected.
- 4.7 The Customer acknowledges that its retrieval of any material or data through the use of the Services is effected at the Customer's choice and risk and that the Customer will be solely responsible for any damage to the Customer's computer system or loss of data that results from the retrieval of such material or data.
- 4.8 No matter how many claims are made and whatever the basis of such claims, Amicus Networks maximum aggregate liability to the Customer under or in connection with this Agreement or any other agreement between the parties or any software related to this Agreement, in respect of any direct loss (or any other loss to the extent that such loss is not excluded by the provisions of this clause 4 or otherwise) whether such claim arises in contract or in tort shall not exceed a sum equal to the amount of the monthly fee paid by the Customer for the Services.
- 4.9 The Customer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with this Agreement and that the Fees have been calculated on the basis of the limitations and exclusions in this Clause 4 and that the Customer will effect insurance as is suitable having regard to its particular circumstances and the terms of this Clause 4.
- 4.10 Nothing in this Agreement shall apply so as to restrict liability for death or personal injury resulting from the negligence of Amicus Networks or its appointed agents or for fraud or fraudulent misrepresentation.
- 4.11 Amicus Networks excludes any warranty as to the quality or accuracy of information received through the Services.
- 4.12 The Customer acknowledges that where the Services include the provision of third party services or products by Amicus Networks, such products and/or services may be subject to further specific terms and conditions and accordingly the Customer accepts and warrants that it will comply with such terms and conditions as are brought to its attention by Amicus Networks.
- 4.13 The Customer further acknowledges that it is solely responsible for the use of its account with Amicus Networks and accordingly shall be responsible for all costs, telephone call charges, data usage charges, expenses and claims in relation to the use of its account, whether by the Customer or otherwise and it is the Customer's responsibility to ensure that it maintains the security of its own systems, passwords and login details in accordance with Clause 7 below.
- 4.14 The Customer will be liable for any losses or charges incurred as a result of unauthorised use of the Services including fraud, theft or misuse.
- 4.15 If the Services include any services which are subject to the PhonepayPlus regulator, then the Customer warrants that it is fully aware and familiar with all applicable requirements of the PhonepayPlus Code of Practice and shall fully comply with all of its obligations under the same and will also comply with any directions which PhonepayPlus may make from time to time. The Customer further warrants that no sanction has been imposed on it by PhonepayPlus which may prevent Amicus Networks from providing those specific services to it.
- 4.16 Amicus Networks shall be entitled to terminate the type of Service referred to in clause 4.14 above in the event that PhonepayPlus directs it to do so or in order to prevent any breach of the PhonepayPlus Code of Practice.

**5. SERVICE LEVEL AGREEMENT**

- 5.1 **Service Availability:** The Services shall be made available with an average uptime of 99.95% measured over a 12 month period, excluding all and any time when Planned Outages take place (Uptime). This Uptime level is not applicable to any broadband services provided by Amicus Networks and is subject always to the exclusions and limitations set out in clause 4.
- 5.2 **Network Latency:** Latency is the delay in traffic between any start and end point on the Amicus Networks Service provided. It is measured from core node to core node in milliseconds (ms) and is averaged as a one-way delay (not round trip delay) over any calendar month. The following table outlines the target service levels for latency based on one-way route averages for the Service that is being provided:

Service	Latency
Transit US	< 30 ms
Transit Europe	< 20 ms
Transit	< 15 ms
Customer Direct Internet Access Ethernet Circuit	< 10ms

**5.3 Service Targets and credits**

- 5.3.1 Amicus Networks technical support operates and is available at all times (subject to the terms of this Agreement) for the management and restoration of Service. Amicus Networks treats all Faults as critical and is targeted to respond to Faults within 1 hour of notification by the Customer and restoration of Service within a target time of 4) hours after diagnosis (Service Targets).
- 5.3.2 Failure to meet the above Service Targets shall entitle the Customer to claim a service credit on a pro rata basis at the rate of 1 day's rental refund per hour of downtime (being cumulative continuous time during which a Fault continues to render the Service at Fault).

- 5.4 **Fault Escalation**
- 5.4.1 Fault escalation procedures can be invoked in the following situations:
- 5.4.1.1 Where a fault condition is serious enough to cause significant impact, or presents a significant threat, to the services provided by Amicus Networks
- 5.4.1.2 If a reported Fault exceeds the target time for repair
- 5.4.2 The Customer may at any time during the fault condition request immediate escalation. All requests must clearly state the reason for escalation, and the request and any subsequent actions are to be recorded by both parties on their respective fault logging systems. Amicus Networks will respond to all such requests, and will advise if a request is deemed to be invalid. A response is to be provided within thirty (30) minutes of the request being made.
- 5.5 Service Monitoring: Amicus Networks continuously monitors all elements in its network and can therefore detect service failures, and calculate availability, from its own network management systems. For the avoidance of doubt, the Customer will still be required to notify Amicus Networks should they experience any difficulties with any Services.
- 5.6 **General**
- 5.6.1 If an on-site visit reveals that there is no fault with the Service, the Fault is a Planned Outage or the Fault is an outage resulting from any of the circumstances referred to in clause 4.1, we may charge an engineer call-out fee to cover Amicus Networks's or a third party engineers cost in attending the site. In all cases, service credits will only be issued if the Customer's credit account complies with Clause 2 of this Agreement.
- 5.6.2 Where you have agreed an appointment with Amicus Networks for work at the End Users' site, if the engineer is unable to carry out the work at, or gain access to, such End User site or the appointment is missed. Amicus Networks reserves the right to raise a Visit Charge as per the Amicus Networks Price List.
- 5.7 **Claiming Service Credits**
- 5.7.1 Service credit claims must be submitted in writing to Amicus Networks within 5 working days of the event (not including bank holidays or public holidays).
- 5.7.2 You agree that service credits shall be your sole and exclusive remedy for failure to meet the agreed Service Targets.
- 5.8 **Maintenance**
- 5.8.1 In order to ensure compliance with its obligations under this agreement regarding any part of the Services, Amicus Networks and its suppliers may carry out preventative maintenance from time to time anywhere on its network. Such preventative maintenance shall be categorised as follows:

Type Of Maintenance	Notification to the Customer
<b>Routine Maintenance:</b> Preventative maintenance, which will not affect the service to the customer. This maintenance is planned and scheduled solely by Amicus Networks acting reasonably.	None Required
<b>Low-risk Maintenance:</b> Preventative maintenance which poses a minor risk (in Amicus Networks reasonable opinion) to the services provided to the customer. This work may include taking parts of the network offline reducing the resilience to the customer.	5 days' prior written notice of the timewindow in which the Scheduled Maintenance shall be carried out.
<b>Scheduled Maintenance:</b> Preventative maintenance which may or will temporarily affect the provision of the Services to the customer.	Where practicable in Amicus Networks reasonable opinion, Amicus Networks shall agree time window with the Customer in which to carry out Scheduled Maintenance. In all other cases, Amicus Networks shall give the Customer at least 5 days' prior written notice of the time window in which the Scheduled Maintenance shall be carried out.
<b>Emergency Maintenance:</b> any preventative maintenance which, in Amicus Networks reasonable opinion, is necessary to arrange or procure or otherwise act upon in an emergency for any reason.	Amicus Networks shall give the Customer 24 hours prior written notice of the time window in which the emergency Maintenance shall be carried out. In some cases a shorter notification window maybe required in order for Amicus Networks to maintain service levels.

- 5.8.2 All notices provided detailed above will include the following information: A brief description of the Planned or Emergency Maintenance;
- 5.8.2.1 Date and time of the Planned or Emergency Maintenance; and
- 5.8.2.2 Estimated duration of the Planned or Emergency Maintenance.
- 5.8.3 Such notice will be sent to the nominated account contact and associated partner (if assigned) via email. In the case of an emergency, we may give you a shorter notice by way of a telephone call.

- 5.8.4 Amicus Networks shall use all reasonable endeavours to carry out any maintenance described above without causing a Service Level Failure. For the avoidance of doubt 'preventative maintenance' in this means maintenance of a problem of which: i) Amicus Networks is aware; and ii) Amicus Networks can act upon prior to the problem causing or being a Service Level Failure.
- 5.8.5 In the event that there is a Service Level Failure: i) due to Routine Maintenance or Low-risk Maintenance, Service Credits may be available in accordance with this agreement. Scheduled Maintenance or Emergency Maintenance, no Service Credits are available.
- 5.9 **Reporting a Fault**
- 5.10 You must comply with any Fault reporting format as advised by us. This includes carrying out our specified pre-check documentation. For the avoidance of doubt, if there is a dispute on any Fault commencement or duration, the times recorded on the Amicus Networks fault system shall be final.
- 5.11 Any Faults or suspected Faults on the Services must be reported to our outsourced Technical Support Team on 01925 748 443 or email [supportteam@amicusnetworks.co.uk](mailto:supportteam@amicusnetworks.co.uk) This line is open at all times, subject to the terms of this Agreement.
- 5.12 Amicus Networks may, without liability, elect to suspend the Services immediately on breach of any of the terms and conditions of this Agreement, including without limitation late or non-payment of sums due and/or if Amicus Networks has reasonable grounds for believing that the Customer is breaching the rights of any third party.
- 5.13 In the event of suspension of the Services pursuant to Clause 6.12 and the subsequent re-connection of the Services to the Customer, Amicus Networks shall be entitled to charge the Customer a sum equal to twenty per cent (20%) of the most recently levied annual fee for the provision of the Services.
- 5.14 Amicus Networks's right to suspend the Services shall be without notice and without any liability whatsoever on the part of Amicus Networks and without prejudice to the Customer's obligation to pay for the Services in their entirety.
- 6. ACCEPTABLE AND IMPROPER USE**
- 6.1 The Customer acknowledges that Amicus Networks has an Acceptable Use Policy (AUP) and the Customer agrees and accepts that such AUP forms part of this Agreement and warrants that it will comply with the AUP in all respects. The Customer further warrants that:-
- (A) it shall not knowingly use the Services to receive or transmit material that is in breach of any Intellectual Property Right, or otherwise unlawful or in breach of Amicus Networks's AUP.
  - (B) its account is to be used by a single user only (unless otherwise agreed) and that it will not allow simultaneous access using the same login;
  - (C) the registered user of the account will keep the username and password secure and not let them become public knowledge and that the password will not be stored anywhere on a computer in plain text;
  - (D) if the password becomes known to any other unauthorised user the Customer will inform Amicus Networks immediately.
- 6.2 Any breach of these warranties or obligations shall entitle Amicus Networks immediately to terminate the Services to the Customer. Alternatively Amicus Networks shall have the option to charge an additional fee for persistently exceeding fair usage limits set out in the AUP. The additional fee chargeable shall be an amount no greater than twenty per cent (20%) of the annual fee payable by the Customer in the twelve (12) month period immediately preceding the breach.
- 6.3 **Network Bandwidth Policy**
- 6.3.1 Whilst Amicus Networks uses its reasonable endeavors to provide a fast and reliable service for all users the Customer should note that contented services such as ADSL, resources are shared between many users. Traffic shaping is performed during busy periods to ensure all users have fair access to resources. Amicus Networks requires all users not to make unreasonable demands on its network. If the Customer is found, in Amicus Networks reasonable discretion, to be making excessive use of the Services, Amicus Networks may without any liability to the Customer restrict or suspend the Services.
- 6.4 The Customer hereby indemnifies and agrees to keep Amicus Networks fully and effectually indemnified from and against any and all losses, costs, actions, proceedings, claims, damages, expenses, including reasonable legal costs and expenses, or liabilities whatsoever suffered or incurred directly by Amicus Networks in consequence of the Customer's breach or non-observance of the AUP.
- 6.5 The Customer shall defend and pay all costs, damages, awards, fees (including any reasonable legal fees) and judgments, awarded against Amicus Networks arising from the above claims and shall provide Amicus Networks with notice of such claims, full authority to defend compromise or settle such claims and reasonable assistance necessary to defend such claim, at the Customer's sole expense.
- 6.6 Use by others: The Customer acknowledges that Amicus Networks is unable to exercise control over the material sent via the Services and that Amicus Networks hereby excludes liability of any kind for the reception by the Customer of viruses, offensive, threatening or obscene material.
- 6.7 The Services may be used by the Customer to link into other networks worldwide, and the Customer agrees to conform to the acceptable use policies of such networks.

## **7. ASSIGNMENT**

7.1 The rights granted to the Customer pursuant hereto are personal and the Customer undertakes that it will not assign the Agreement in any other way, transfer the Services or Software without prior written agreement from a director of Amicus Networks. Actual or attempted contravention of this restriction in any way, whether successful or not, will result in the Services being terminated by Amicus Networks without notice and without any liability whatsoever on the part of Amicus Networks and without prejudice to the Customer's obligation to pay for the Services in their entirety.

7.2 Amicus Networks shall be entitled to assign this Agreement either in whole or in part. This Agreement shall be personal to the Customer who shall not be entitled to assign this Agreement in whole or part.

## **8. DATA PROTECTION, RELEVANT LEGISLATION AND INDUSTRY REGULATIONS**

8.1 Amicus Networks reserves the right to put the names and other information from the registration form relating to the Customer into a computerised directory for internal use only, unless specific written instructions are received from the Customer.

8.2 In the event of an acquisition of Amicus Networks or of a liquidator, administrator or receiver being appointed over Amicus Networks or all or any part of Amicus Networks assets, the Customer's information will only be passed to the acquiring or appointed third party of the business providing that such third party undertakes to use the Customer's information for the same purposes as set out in this Agreement. The Customer's information will not be disclosed to government or local authorities or other government institutions save as required by law or other binding regulations.

8.3 Amicus Networks will use the Customer's information for the purpose of fulfilling orders placed by the Customer, processing any other transactions authorised or made by the Customer with Amicus Networks, informing the Customer of new products, updates, offers and providing other marketing information to the Customer which Amicus Networks thinks the Customer may find of interest or for the purposes of undertaking Customer research.

8.4 The Customer warrants that it complies with and will remain throughout the course of the Agreement compliant with Relevant Legislation as well as relevant industry regulations, including without limitation those issued by OFCOM and OFTEL and all other applicable laws.

8.5 Amicus Networks warrants that it has appropriate technical and organisational measures in place to protect any personal data it is processing against any unauthorised or unlawful processing and against any accidental loss, destruction or damage as defined in the Data Protection Act 1998 (the Act). Amicus Networks shall comply with all relevant provisions of the Act and do nothing which causes, or may cause, Amicus Networks to be in breach of its obligations under the Act.

8.6 Amicus Networks shall be entitled to and is authorised by the Customer to retain any data or information supplied by the Customer or other third party on behalf of the Customer directly or indirectly under the terms of this Agreement for such periods as are required under any applicable law.

## **9. SOFTWARE AGREEMENT**

9.1 Customer's right to use the Software and the documentation provided with the Agreement, both of which are protected by copyright laws, is limited to the terms and conditions described herein

9.2 The Customer may use the Software only if it has either directly accepted the relevant license agreement of the manufacturer and/or by acceptance of all and any specific terms provided by Amicus Networks with the Order or otherwise from time to time in relation to the use of such Software. The Customer may not (a) distribute copies of any of the Software or associated documentation to others, (b) sell, rent, lease, sub-license or otherwise grant any rights to the Software, (c) except to the extent dictated in the associated documentation or instructions for use or as permitted by law translate, reverse engineer, de-compile or disassemble, or otherwise alter the Software or associated documentation without the prior written consent of Amicus Networks or the software manufacturer; or (d) ship or transmit (directly or indirectly) any copies of the Software, or any technical data in the Software or its media, or any direct product thereof, to any entity or place.

9.3 The Customer's license to use the Software shall continue for the term of the relevant license agreement with the manufacturer or otherwise for the term of this Agreement, unless terminated by notice in writing for whatever reason. The Customer's license will terminate immediately if the Customer fails to comply with any of Amicus Networks terms and conditions, and or breaches any term of the software manufacturer's license. Upon any termination, the Customer must remove all copies of the Software in any form from its systems, without prejudice to the Customer's obligation to pay for the Software in its entirety. The Customer shall also provide a written certificate of proof confirming the removal of the Software from its computer systems and each and every device where applicable.

9.4 The Customer will not vary the number of licenses or users in relation to any Software at any time without giving prior written notice to Amicus Networks.

## **9.5 Limited Warranty**

9.5.1 Amicus Networks warrants that the media on which the Software is provided will be free from defects in materials and workmanship under normal use for a period of thirty (30) days after purchase. Defective media may be returned, with proof of purchase, for replacement without charge during the thirty (30) day warranty period. Neither Amicus Networks nor any other provider of the Software warrants that the Software is error-free, will operate without interruption or is compatible with all equipment and software configurations. In addition, the security mechanism implemented by the Software has inherent limitations and the Customer must determine that the Software meets the Customer's needs. This warranty does not cover any Software that has been subjected to damage or abuse or which has been altered or changed in any way. Amicus Networks is not responsible for problems caused by computer hardware, computer operating systems or the use of the Software in conjunction with non-Amicus Networks software.

Except as provided in this Clause 10, Amicus Networks gives no other warranties, express or implied, with respect to the Software, its merchantability or fitness for a particular purpose.

**Limitation of Liability regarding the Software, Clause 10.6 and 10.7 are without prejudice to the general application of Clause 4**

9.6 Repair, replacement or refund at the option of Amicus Networks is the exclusive remedy if there is an inherent defect in any of the Software. In no event shall Amicus Networks or the manufacturer of the Software or the Software providers be liable for any indirect loss, consequential loss, loss of profit, revenue, data or goodwill howsoever arising suffered by the Customer or for any wasted management time, failure to make anticipated savings or liability of the Customer to any third party arising in any way in connection with this Agreement or otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.

9.7 In no event shall the liability of Amicus Networks or the provider or manufacturer of the Software exceed the amount paid by the Customer for the Software at issue. The Customer shall not use the Software in any case where damage or injury to person, property or business may occur if any error occurs. The Customer expressly assumes all risk for such use.

9.8 Subject to any pre-existing rights of third parties and of the Customer the Intellectual Property Rights (IPR) in all reports, documents and other materials which are generated or acquired by Amicus Networks in the performance of the Services shall belong to and become vested in Amicus Networks. Nothing in this Agreement or done under the terms of this Agreement shall be taken to diminish any Amicus Networks copyright, patent rights or any other IPR which would apart from this Agreement, vest in Amicus Networks.

**10. TERM AND TERMINATION**

10.1 This Agreement to provide the Services will continue for the Contract Period and thereafter unless terminated by either party giving at least 30 days' written notice to the other party, such notice not to expire prior to the end of the Contract Period. All Ethernet and server hosting, and co-location services require a 60 days' written notice period to terminate the Agreement, such notice not to expire prior to the end of the Contract Period.

10.2 Either party may terminate this Agreement immediately by written notice to the other in the event that any of the following occur:-

10.2.1 the other fails to pay any amount due hereunder within 30 days of its due date or breaches any term of this Agreement and such breach is incapable of remedy or continues for a period of 30 days after notice requiring the same to be remedied has been given by the terminating party to the other party; or

10.2.2 an order is made or a resolution is passed for the winding up of the other party, or if a provisional liquidator is appointed in respect of the other party, or if an administration order is made in respect of the other, or if a receiver is appointed in respect of the other or all or any of its assets or if the other is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or if any voluntary arrangement is proposed under Part 1 of the Insolvency Act 1986 in respect of the other.

10.3 Upon termination of this Agreement for whatever reason all due or outstanding fees and expenses owed by the Customer to Amicus Networks shall forthwith become due and payable.

10.4 In the event of early termination, Customer shall pay Amicus Networks the remaining fees of the Agreement for the remainder of the Contract Period (as extended if applicable).

**11. GENERAL**

11.1 Subject to Clause 11.2, this written Agreement together with any schedules, and the Order constitutes the entire agreement between the parties hereto relating to the subject matter hereof and neither relied on any representation made by the other party unless such representation is expressly included herein. Nothing in this Clause 11.1 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance on the same as being fair and reasonable.

- 11.2 To the extent that there is any inconsistency between a term specified in this Agreement and any term specified in the Order, the term of the Order shall prevail and take precedent.
- 11.3 Amicus Networks shall be entitled to amend any term or condition of this Agreement, including without limitation the Services, but excluding the Price and Fees, upon giving not less than 30 days' written notice to the Customer, provided always that if the Customer does not agree with such amendments then it shall be entitled to terminate this Agreement without further liability to Amicus Networks within 30 days of receipt of such notice upon giving not less than 60 days' notice in writing to Amicus Networks.
- 11.4 If any provision of this Agreement or part thereof shall be void for whatever reason, it shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- 11.5 Any notice given pursuant here to may be served personally or sent by pre-paid registered letter or recorded delivery to the addresses given here above or to the email address specified at the end of this Agreement (or such other email address properly notified to Amicus Networks in accordance with this clause from time to time). Such notice shall be deemed to have been duly served upon and received by the addressee, when served personally, at the time of such service or, when posted, 48 hours after the same shall have been put into the post correctly addressed and pre-paid, or if by email, at the time the email is sent.
- 11.6 Neither party shall in any circumstances be liable to the other party for any loss whatsoever whether directly or indirectly incurred or suffered by the other party by reason of any delays or failures in the performance of its obligations hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control (including but not limited to a fault of sub-contractors, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or communications network, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, or storm)(Force Majeure). If either of the parties shall become aware of any circumstances of Force Majeure which gives rise to or which is likely to give rise to any such delay or failure on its part it shall forthwith notify the other party immediately and shall inform the other party of the estimated period that such delay or failure will subsist. If the Force Majeure circumstances continue for a period of 30 days or more either party shall be entitled to terminate this Agreement by written notice to the other.
- 11.7 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.
- 11.8 This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.
- 11.9 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement. If the parties cannot resolve the dispute within 12 weeks of the dispute being raised, or if the Customer has received a notification from Amicus Networks confirming that the matter in dispute has reached deadlock, either party may choose to refer the dispute to mediation by Otelo for independent alternative dispute resolution, further details of which are set out on Amicus Networks's Website. If the dispute has not been resolved within 30 days of referring it to Otelo then either party shall be entitled to take such further action and/or proceedings as it sees fit.
- 11.10 Notwithstanding the provisions of clause 9.7 each party agrees to keep confidential and not to disclose to any third party without the prior written consent of the other parties (except as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party, unless such information is public knowledge or subsequently becomes public knowledge other than by breach of this Agreement. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information. The provisions of this clause shall remain in force following termination of the Agreement.