

**WHEREAS:**

- (1) These Terms & Conditions apply to individuals and organisations registered with us, for the purpose of obtaining Services from us.
- (2) In these Terms & Conditions, "Company", "we", "us", and "our" means Digital Mail Ltd, trading as dmClub, a company registered in United Kingdom under number 266 1078 and whose registered office is at Tabernacle Court, 16-28 Tabernacle Street, London EC2A 4DD.
- (3) In these Terms & Conditions, "Customer", "you" and "your" means the individual or organisation that is registering with dmClub and who will accept these Terms & Conditions upon doing the same.
- (4) By registering with dmClub, you signal your acceptance of these Terms & Conditions, agree to be bound by them and shall enter into a binding agreement with us (the "Agreement").

**Table of contents:**

<b>1</b>	<b>Definitions and Interpretation .....</b>	<b>1</b>
<b>2</b>	<b>Commencement of Agreement .....</b>	<b>4</b>
<b>3</b>	<b>Commencement of Service Term.....</b>	<b>4</b>
<b>4</b>	<b>Provision of Services .....</b>	<b>4</b>
<b>5</b>	<b>Fault Reporting and Support Requests.....</b>	<b>5</b>
<b>6</b>	<b>Use of Services .....</b>	<b>5</b>
<b>7</b>	<b>Equipment .....</b>	<b>6</b>
<b>8</b>	<b>Allocation and use of Telephone Numbers .....</b>	<b>6</b>
<b>9</b>	<b>Charges and payment .....</b>	<b>6</b>
<b>10</b>	<b>Changes to Service and to this Agreement .....</b>	<b>7</b>
<b>11</b>	<b>Security and Back Up .....</b>	<b>7</b>
<b>12</b>	<b>Cancellation and Suspension .....</b>	<b>8</b>
<b>13</b>	<b>Termination.....</b>	<b>8</b>
<b>14</b>	<b>Force Majeure .....</b>	<b>9</b>
<b>15</b>	<b>Intellectual Property.....</b>	<b>9</b>
<b>16</b>	<b>Confidentiality .....</b>	<b>10</b>
<b>17</b>	<b>Indemnity and limitation of Liability.....</b>	<b>10</b>
<b>18</b>	<b>Assignment or Transfer .....</b>	<b>12</b>
<b>19</b>	<b>Law .....</b>	<b>12</b>
<b>20</b>	<b>Dispute Resolution .....</b>	<b>12</b>
<b>21</b>	<b>Severance .....</b>	<b>13</b>
<b>22</b>	<b>Notification and Notice.....</b>	<b>13</b>
<b>23</b>	<b>Entire Agreement .....</b>	<b>13</b>
<b>24</b>	<b>General.....</b>	<b>13</b>

**1 Definitions and Interpretation**

- 1.1 In these Terms & Conditions the following terms shall have the following meanings:

<b>"Business Day"</b>	means any day other than Saturday or Sunday that is not a United Kingdom Public or Bank Holiday;
<b>"Normal Business Hours"</b>	means 09:00 (am) to 18:00 (pm) UK local time Monday-Friday, excluding all UK Public and Bank Holidays;
<b>"Commencement Date"</b>	means the date of our sending you an email confirming your Registration;
<b>"Parties"</b>	means you (the Customer) and Digital Mail Ltd.
<b>"Confidential Information"</b>	means all business, technical, financial or other information created or exchanged between the Parties in the course of fulfilling their obligations under the Agreement;

<b>"Intellectual Property Rights"</b>	means any and all intellectual property rights of any kind subsisting in any part of the world, whether or not registered and all applications, renewals and extensions of the same, including (without limitation) copyright, database rights, trade marks, patents or design rights and other rights in goodwill, know-how, trade secrets and other confidential information;
<b>"Agreement Term"</b>	means the period of time during which information relating to your User Account shall be held by us, and during which this Agreement shall subsist;
<b>"Service Term"</b>	means an agreed period of time during which a Service Package will be made available for your use as set out in these Terms & Conditions, being the Initial Service Term and any Service Term thereafter for so long as this Agreement subsists. The Service Term will automatically renew for successive Service Terms unless and until each side gives to the other one month's written Notice in writing to coincide with the next renewal date or the Agreement is terminated earlier in accordance with clauses 12 and/or 13 or if you fail to pay any Repeat Rental Fee;
<b>"Initial Service Term"</b>	means the first agreed period of time during which a particular Service Package will be made available for your use as set out in these Terms & Conditions;
<b>"dmClub Dealer"</b>	means any individual, sole trader or business that has, by agreement with Digital Mail Ltd, contracted to sell dmClub Service Packages in exchange for a commission on the sale of such Service Packages and has been authorised by dmClub to do so;
<b>"Services"</b>	means the call handling and/or other services to be provided via dmClub;
<b>"Service Account"</b>	means the unique alphanumeric identity assigned to a single instance of your entering into agreement with dmClub for the provision of a Service Package;
<b>"Service Type"</b>	means an agreed combination of call handling and or other Services associated with a Service Account and provided according to an agreed Price Plan;
<b>"Service Package"</b>	means any combination of Service Account, Service Type, Price Plan and any other additional products or Services made available for your use for an agreed Service Term via dmClub or via a registered dmClub Dealer;
<b>"Price Plan"</b>	means an agreed level of Setup and Rental Fees and Tariff set by us and payable by you for provision of a Service Package;
<b>"Setup Fee"</b>	means a fee that may be set by us and paid by you at the start of the Initial Service Term in order that a Service Package may be made available to you;
<b>"Rental Fee"</b>	means a fee that may be set by us and paid by you at agreed intervals for the Service Term in which a Service Package is made available for your use;
<b>"Repeat Rental Fee"</b>	means a fee that may be set by us and paid by you at the end of a Service Term, in full or at agreed subsequent intervals, in order that a Service Package which you have held for one or more previous Service Terms be made available for your use for an agreed further Service Term;
<b>"Renewal Reminder"</b>	means a series of automated emails sent by us to your Correspondence Email Address during the month preceding the end of a Service Term giving Notification to you of the fees due for payment by you in order that a Service Package which you have held for one or more previous Terms shall continue to be available for your use for an agreed further Service Term;
<b>"Usage Fee"</b>	means the deductions payable from your Account Credit in accordance with your usage of the Service Package, at a Tariff specified by us and agreed by you on selection of a Price Plan;
<b>"Tariff"</b>	means the rate or rates at which Usage Fees will be deducted from your Account Credit in accordance with the terms of your Service Package;
<b>"Gold Fee"</b>	means a fee that may be set by us and shall be paid by you in order that a particular telephone number be made available to you as part of a Service Package;
<b>"Account Credit"</b>	means any payments made to dmClub as prepayment for Usage Fees according to your Price Plan;
<b>"Registration"</b>	means the submission by a Customer of Registration Data as required by dmClub, for the purpose of creating a User Account, and the acknowledgement by us that a dmClub User Account has been accepted by us and created;
<b>"Registration Data"</b>	means the information required by us from you for the purpose of creating a User Account, whether the information is provided directly to dmClub or to us via a registered dmClub Dealer;

<b>"User Account"</b>	means your Registration Data, dmID, associated Service Accounts, Account Credit and all information relating to this Agreement and any related activities of both Parties, held by us in subject to Clause 16 of this Agreement and displayed wholly or in part within your Clubhouse;
<b>"Unacceptable Use"</b>	has the meaning given in clause 6.3;
<b>"dmID"</b>	means the email address provided by you upon Registration, and thereafter used by you as a unique identifier when accessing your Clubhouse;
<b>"Clubhouse"</b>	means the control panel, accessible from our Website following provision of the correct dmID and password, through which you may view and manage your User Account and Service Package or Packages;
<b>"Correspondence Email Address"</b>	means a current email address provided by you in your Clubhouse, which may be but is not necessarily identical to your dmID, at which you are able to receive communications from dmClub;
<b>"Support"</b>	means reasonable efforts undertaken by dmClub Support personnel by telephone or email during Normal Business Hours or such other means we may determine (in our sole discretion) in accordance with the provisions of clause 5 to clarify or resolve queries in relation to your Service Package, when contacted by telephone or email in connection with same;
<b>"Fault"</b>	means interruption, downtime or loss of data relating to your Service Package where this occurs as a result of an error in our service provision;
<b>"Our Network"</b>	means the telecommunications network operated by us, responsible for switching our/your inbound and or outbound calls to and or from the chosen destination;
<b>"Our Chosen Carriers"</b>	means any third party telecommunications carrier or carriers we have pre-selected responsible for switching our/your inbound and or outbound calls to and or from the chosen destination;
<b>"Our Website"</b>	means our dmClub website dmclub.net and subdomains thereof;
<b>"Formal Complaint Procedure"</b>	means the procedure whereby formal complaints are submitted to, and investigated by us. A copy of this procedure is available on our Website;
<b>"NGN"</b>	means an acronym for Non-Geographic Number, which we license or loan to you, or port on your behalf from another Network to a Network of our choice;
<b>"Fraud Traffic"</b>	has the meaning given in clause 6.4.
<b>"Notify", "Notification"</b>	means the procedure whereby we will inform you of routine changes to your Service Package or Packages. This may take one or more of the following forms: a) an email to your Correspondence Email Address; b) an article in a dmClub Customer newsletter sent via email; or c) a notification in your Clubhouse.
<b>"Notice"</b>	means formal notice of exceptional matters regarding your dmClub Service Package or Packages, for example suspension or termination of your Service Package. Where Notice is served by us it will take the following form: a) an email sent to your Correspondence Email Address; b) a fax sent to the Fax Number provided in your Registration Data; and c) a printed letter sent to the postal address provided in your Registration Data.  Where Notice is served by you it shall be sent in writing, by email and post.

## **2 Commencement of Agreement**

- 2.1 The Agreement is between you and dmClub (the Parties).
- 2.2 Nothing in this Agreement shall be deemed to indicate that any other individual or organisation shall be a Party to this Agreement.
- 2.3 The Agreement Term is deemed to commence from the date of your indicating, whether during the process of Registration with dmClub, or in writing or via another suitable electronic form, that you have accepted these Terms & Conditions.

## **3 Commencement of Service Term**

- 3.1 A Service Term is deemed to commence from the date of complete payment of all charges applicable to the Service Package selected by you, to which that Service Term shall apply.
- 3.2 We may terminate this Service Term prior to the first provision of Services to you with no liability if:
  - 3.2.1 we cannot reliably identify you;
  - 3.2.2 you fail to provide payment in full as specified for your Service Package;
  - 3.2.3 we are unable to verify your payment for any reason;
  - 3.2.4 we have reasonable cause to suspect that you may be attempting to obtain a Service Package for Unacceptable Use; or
  - 3.2.5 if for any other reason we are unable to provide the Service Package or the Services.
- 3.3 You may cancel the Service Term and obtain a full refund on any payments made in connection with your Service Package (the dmClub 'No Quibble Money Back Guarantee'), subject to the following conditions:
  - 3.3.1 You have incurred Usage Fees of less than £5. If you have incurred more than £5 in Usage Fees we will deduct any relevant Usage Fees from the refund;
  - 3.3.2 Your payment was processed in full within 7 Business Days of ordering your Service Package;
  - 3.3.3 Your Service Package was not a renewal of an existing Service Package;
  - 3.3.4 You request your refund in writing, within 14 days of ordering the Service Package.
  - 3.3.5 There has been no attempt to port any associated telephone numbers
  - 3.3.6 There has been no commercial use of any of the associated telephone numbers, including dissemination, publication, or third party calls
- 3.4 Clause 3.3 does not affect your statutory rights where you are a consumer and is without prejudice to any other rights to which you may be entitled under English law.
- 3.5 Your Service Package will continue for the Initial Service Term.
- 3.6 30 days prior to the end of the Initial Service Term we will send you a Renewal Reminder giving Notification to you of any Repeat Rental Fee and/or other Fees due for the continuation of your Service Package.
- 3.7 Where no action is taken by you during this period to update payments for your account we will attempt to use any Account Credit added to your User Account for payment of any Repeat Rental Fee and/or other Fees due for the renewal of your Service Package.
- 3.8 Where insufficient Account Credit is present in your User Account to pay any Repeat Rental Fee and/or other Fees due for the full renewed Service Term, we will attempt to use any Account Credit present in your User Account to renew your Service Package for one calendar month. We reserve the right to make an additional charge in this event.
- 3.9 Where insufficient Account Credit is present in your User Account to pay any Repeat Rental Fee and/or other Fees due for the renewal of your Service Package for one calendar month, and of your taking no action to rectify the situation, we may terminate your Service Package in accordance with clauses 12 and 13 of this Agreement.
- 3.10 We undertake to give you Notification of these events to you as and when they occur, by means of an email sent to your Correspondence Email Address.

## **4 Provision of Services**

- 4.1 We will make reasonable endeavours to provide the Service Package to you materially in accordance with this Agreement and subject to availability, provided that nothing in this Agreement shall require us to accept your request for Services if we determine (in our sole discretion) that you are not eligible under the requirements set out in clause 6.1.
- 4.2 We shall provide the Service Package in the manner of a reasonably skilled electronic telecommunications provider and in a professional manner.

- 4.3 We do not guarantee that the Service Package will be error free or without interruption. Provision of the Service Package may be dependent on the provision to us of services by third party telecommunications providers. We are not responsible to you for any faults or interruptions caused by them.

## **5 Fault Reporting and Support Requests**

- 5.1 Where you require support or assistance, or believe you are experiencing a Fault, you should contact dmClub Support.
- 5.2 You can contact dmClub Support during Normal Business Hours by telephoning 020 7060 2000.
- 5.3 You may contact us by email at support@dmclub.net at any time. In the event that you contact us outside Normal Business Hours we will respond to email requests for support within four hours of commencement of the next Business Day.
- 5.4 You must report the Fault to dmClub Support within 48 hours of its first occurrence, for us to create a fault handling ticket and provide fault handling and resolution services.
- 5.5 Where having investigated a Fault reported by you, we find that you have not suffered a Fault resulting from our service provision, we reserve the right to charge you for all reasonable costs incurred in investigating the report and you agree to pay such charges.
- 5.6 You undertake to request Support or report any Fault you believe you are experiencing in a clear, factual, courteous and reasonable manner. In the event that your conduct during fault reporting is deemed by our staff to be threatening, abusive or violent in language, manner or content we reserve the right to revoke telephone support without notification and resolve the matter by email only.
- 5.7 You undertake to follow any reasonable instructions given to you by dmClub staff or published on our Website in connection with our performance of our obligations under this Agreement.
- 5.8 We undertake to make reasonable efforts to provide Support that, in our professional opinion, is appropriate, in a timely manner. Where, in our professional opinion, a request for Support falls outside appropriate limits we shall be entitled to offer the services requested but levy a separate charge for their provision at such rates as shall be determined by us.

## **6 Use of Services**

- 6.1 To enter into this Agreement to receive a Service Package upon the Commencement Date for the Services, you must be a business, firm or an organisation or you must be an individual at least 18 years old.
- 6.2 You hereby agree and warrant that you will not use our Service Package for unlawful purposes, Unacceptable Use or Fraud Traffic.
- 6.3 Unacceptable Use is defined as:
- 6.3.1 Any use of the Service Package that causes degradation of our Services to yourself or any of our other customers;
- 6.3.2 Any use of the Service Package to disseminate unsolicited marketing or advertising material;
- 6.3.3 Any use of the Service Package to impersonate or give others cause to believe you are associated with any individual, business or other organisation where you cannot upon request provide reasonable proof of such identity or association;
- 6.3.4 Any use of the Service Package that is in breach of third party's Intellectual Property Rights;
- 6.3.5 Any use of the Service Package to provide, attempt to provide or claim to provide any service or product for which a licence is required, without the appropriate licence being held by you in the country in which you are providing, attempting to provide or claiming to provide that service or product;
- 6.3.6 Any use of the Service Package to participate in the transmission or storage of material that is pornographic and/or obscene, defamatory or menacing and/or offensive or which would result in the breach of any third party's Intellectual Property Rights, confidential information or privacy;
- 6.3.7 Any use of the Service Package that is in breach of the Data Protection Act 1998 or any amendments thereof;
- 6.3.8 Any use of the Service Package that causes congestion, disruption or overload of Our Network or Our Chosen Carriers' Networks;
- 6.3.9 Any use of the Service Package that contravenes Ofcom or PhonePayPlus regulations.
- 6.4 Fraud Traffic is defined as:
- 6.4.1 Any traffic which any telecommunications carrier that transmits traffic to Our Network is unable to bill or collect;
- 6.4.2 Any traffic where there is a reasonable expectation that the end user is not likely to pay their telephone bill because the calls are disputed as not originating from the telephone line for which the respective end user is responsible;

- 6.4.3 Any traffic where calls are being made to inflate payments due from us or Our Chosen Carriers (known as Artificially Inflated Traffic, or AIT);
- 6.4.4 Any traffic where there is repeated calling from the same number, by repeated the parties mean continual or sporadic, or habitual, where it is proven there is a repeated pattern of an origination number dialling a premium rate number; or
- 6.4.5 Any traffic which is electronically generated by a computer or some other electronic software, or continually dialled from a human operated call centre.
- 6.5 You agree to provide us with 14 days' prior written Notice of any activities, promotions or campaigns which may cause abnormal demands on our Network or Our Chosen Carriers' Networks.
- 6.6 Abnormal demands are defined as more than 30 simultaneous calls.
- 6.7 You acknowledge and agree that the Services and the Service Packages are not designed for use for calls to emergency services or in the operation of an emergency service or other time-critical service. You acknowledge and warrant that you will not rely solely upon a dmClub Service Package or Packages to make calls to emergency services or to operate an emergency service.
- 6.8 You agree to indemnify us against any claims, actions, proceedings or threatened proceedings from third parties and against any losses, damages or costs (including court costs and legal fees) suffered or incurred by us arising out of any breach of your obligations under these Terms and Conditions.
- 6.9 You are responsible for ensuring that only those persons you authorise use the Service Package and you agree to pay all charges relating to use of the Service Package.
- 6.10 You acknowledge and warrant that:
  - 6.10.1 The Service Package is for your use and you will not re-supply or resell or otherwise make the Service Package available to any person on a commercial basis or any other basis unless otherwise agreed in writing by us; and
  - 6.10.2 Any failure to comply with this clause 6 is a material breach of this Agreement.

## **7 Equipment**

- 7.1 You agree to keep any of your equipment, required for us to provide your Service Package, properly maintained and in serviceable condition.

## **8 Allocation and use of Telephone Numbers**

- 8.1 Where you choose or are allocated any telephone numbers as part of our Service Package you acknowledge that you do not acquire any legal, equitable or other rights in relation to any telephone numbers. You are not entitled to sell any telephone numbers rented to you by us as part of this Agreement; and neither are you permitted to register them as trade marks.
- 8.2 NGNs according to the prefix and use are regulated in the UK by Ofcom and PhonePay Plus. In the event that we allocate by license or loan or port such numbers for you and you expend monies promoting them in stationery, within literature or other media, you agree and understand that these regulatory bodies have the authority to alter their terms and conditions of use, the name or classification by which these numbers may be known as or may be referred to, and the charges or credits that may apply, and if such changes are made, you accept them and agree that we may make such necessary amendments to numbers and or introduce additional codes and alterations and terms and conditions of use that are required to comply.
- 8.3 You may port telephone numbers to and from Our Network or Our Chosen Carriers' Networks providing always we or Our Chosen Carriers have a porting agreement with the other network and providing payment has been received in full by us for all applicable charges.
- 8.4 Where all relevant charges have not been paid in full, telephone numbers may only be transferred or ported to another network with our prior written permission.

## **9 Charges and payment**

- 9.1 Frequency and quantity of payments and charges for different Service Packages are specified on our Website at the time of purchase or as otherwise detailed by us.
- 9.2 We will make reasonable efforts to ensure that information relating to frequency and quantity of payments and charges for different Service Packages specified on our Website is accurate. Where information relating to any aspect of any Service Package displayed on our Website or any Website owned and operated by any registered dmClub Dealer is inaccurate or misleading you agree that we shall not be bound by the information so displayed.
- 9.3 You agree to make payments in advance for all Usage Fees by means of a payment method we accept, as specified on our Website.

- 9.4 You agree to ensure that adequate Account Credit is available in your User Account at all times to pay all Usage Fees incurred by you in the course of your usage of the Service Package, including any VAT on these charges.
- 9.5 VAT will automatically be deducted from any money paid to your User Account prior to Account Credit being available in your User Account for payment of charges.
- 9.6 If a direct debit, PayPal, cheque, credit card or debit card payment is disputed, dishonoured or cancelled we reserve the right to charge you an administrative charge for any third-party charges and internal costs we incur as a result.
- 9.7 Subject to the provisions of Clause 3.3, any Account Credit added to your User Account is non-refundable.
- 9.8 We reserve the right to delete any Account Credit added to your User Account in the event that your User Account remains untouched for one year or more.
- 9.9 We reserve the right to alter our Tariff during the Initial Service Term or any subsequent Service Term, mid-term, without prior Notification to you, if we are given due cause to do so (such as an increase in charges to us, relating to a Service we provide to you from a network or carrier). If a variation imposed on us has been backdated, we reserve the right to backdate our variation to maintain our margin; and in such event that backdating means that we have undercharged or overpaid you, you agree to pay us back the amount of any such undercharge or overpayment, within 14 days of our Notification to you of such an undercharge or overpayment.
- 9.10 In the event that you have not paid all charges due to us by the due date, interest shall accrue on such due amounts at an annual rate equal to 4% above the then current base lending rate of the Bank of England from the due date and continuing until fully paid, whether before or after any judgment. We reserve the right to claim interest and any other remedies available under the Late Payment of Commercial Debts (Interest) Act 1998. We are under no obligation to provide any or all of the Services and/or Service Package(s) while the outstanding charges remain unpaid.
- 9.11 For any Service Packages that generate a payout to you, we reserve the right to delay, suspend or refuse payout if:
- 9.11.1 You do not claim your payout, either as Account Credit or as payment, within the time specified in the relevant area of your Clubhouse or more than 12 months has elapsed since the end of the month that the traffic for the payout has elapsed;
- 9.11.2 We have reasonable cause to suspect that your use of the Service Package may be in breach of clause 6 (Use of Services) of this Agreement;
- 9.11.3 We have reasonable cause to suspect that your use of the Service Package constitutes Fraud Traffic;
- 9.11.4 We have reasonable cause to suspect that your use of the Service Package may be in breach of UK law or UK telecommunications guidelines.

## **10 Changes to Service and to this Agreement**

- 10.1 On 30 days' prior written Notification to you we may vary any of these Terms & Conditions and any other provisions or technical specifications of the Service Package for operational reasons, external economic factors, or legal or regulatory requirements.
- 10.2 If on receipt of such Notification you do not wish to accept such variation of these Terms & Conditions you may upon providing us written Notice terminate the Agreement within 30 days of receipt of Notification of such changes.
- 10.3 Where advance payment has been made by you for a Service Package or Packages we will provide an appropriate refund based on unconsumed service.

## **11 Security and Back Up**

- 11.1 You are responsible for the security of your use of the Service Package, including but not limited to protecting all dmIDs and passwords, backing up all data, employing appropriate security devices, including virus checking software and having disaster recovery processes in place.
- 11.2 Please note that it is not possible for us to confirm the identity of all persons contacting us. We may, therefore, disclose any information in connection with your User Account to anyone who purports to be you by correctly quoting your dmID and password, security code or secret word.
- 11.3 You must contact us immediately if any confidential password, security code or other information relating to your User Account and or Service Package is disclosed to any unauthorised person.
- 11.4 You agree that you shall be held liable for any Usage Fees associated with the Service Package for a period of one hour after you report to us in writing during Normal Business Hours the disclosure of any confidential password, security or other information relating to your User Account and or Service Package to us. If you

report the disclosure outside of Normal Business Hours or leave a message on our customer service department answering machine, the one hour period will commence at the beginning of our next Business Day.

- 11.5 You agree to let us know immediately in writing if you become aware of any matters that you believe or might reasonably believe may constitute a threat to the security of your User Account or the Service Package or the Services.

## 12 Cancellation and Suspension

- 12.1 You agree that where your account with us has fallen outside and beyond our terms of payment and we have Notified you in writing and/or verbally and you have failed to bring your account within terms, within 21 days thereafter we may suspend, and or disconnect any or all Services to which any outstanding payments relate and the performance of any associated obligations with immediate effect and without prejudice to our rights under this Agreement, including our right to payment. Notwithstanding any other provisions of this Agreement, we shall have no liability to you for any loss or damages you suffer as a consequence of such suspension.
- 12.2 We may by giving you oral notice (confirmed in writing) or written Notification suspend immediately the provision of the Service Package (or a part thereof) to you until further notice without compensation:
- 12.2.1 for repairs, maintenance or improvement;
  - 12.2.2 if you do not comply with Clause 6 (Use of Service) of this Agreement;
  - 12.2.3 if you are in breach of any other obligation imposed on you under this Agreement; or
  - 12.2.4 if we are required to comply with an order, instruction or request of any competent authority.
- 12.3 Any exercise of our right to suspend the Service Package shall not exclude our right subsequently to terminate this Agreement. We may refuse to restore the Service Package to you until the provisions in Sub-clauses 12.2.2 to 12.2.3 of these General Terms are cured and we receive an acceptable assurance from you that there will be no further breach.
- 12.4 You are liable for charges during suspension or disconnection unless we decide otherwise and give you Notice to that effect in writing.
- 12.5 We may charge to reconnect you to the Services after a suspension under any clause of this Agreement and we may change your payment terms as a condition of reconnection in our sole discretion.
- 12.6 We may give 1 months notice that we shall not offer renewal of a service term, if we feel that we do not have a good and constructive working relationship with you.
- 12.7 Should you wish to cancel a service, so that the service term is not automatically renewed, then you must cancel the service prior to the end of the service term.

## 13 Termination

- 13.1 We may terminate either your Agreement Term or Service Term or both immediately at any time by giving you prior written Notice if:
- 13.1.1 We cannot reliably identify you;
  - 13.1.2 You give us reasonable grounds to believe that you or any other person at your premises uses the Service Package or is suspected, in our reasonable opinion, of using the Service Package in breach of Clause 6 (Use of Service) of these Terms and Conditions;
  - 13.1.3 you do not perform or observe any other obligation imposed on you under this Agreement; whether such obligation is specified in this Agreement as being material or not;
  - 13.1.4 You give us reasonable grounds to believe that you have provided us with false, inaccurate or misleading information either for the purpose of obtaining the Service Package from us or during the provision thereof;
  - 13.1.5 You fail to pay any sum outstanding and due to us within 21 days of our first sending Notification demanding payment;
  - 13.1.6 Having been notified by us that you are in material breach, you fail to remedy that breach within 30 days of our written notification to you;
  - 13.1.7 You commit persistent breaches, whether or not material;
  - 13.1.8 You make any arrangements with your creditors or become bankrupt, become subject to an administrative order or go into liquidation, whether voluntary or compulsory (other than for the purposes of reconstruction or amalgamation), or an encumbrancer takes possession of, or a receiver or administrator is appointed in respect of any of your assets or any broadly similar circumstances arise in any other jurisdiction in consequence of debt;
  - 13.1.9 We are required to comply with an order, instruction or request of any competent authority;
  - 13.1.10 We are no longer able to provide your Service Package for any reason; or
  - 13.1.11 Any other authority we have to provide your Service Package ends.



- 13.2 We may terminate this Agreement immediately by written Notification to you if our or any of Our Chosen Carriers' licenses is revoked or modified in any way which has a material impact on our ability to provide the Service Package agreed with you, unless we are able to offer substantively the same Service Package anticipated by you, through one or more alternative carriers.
- 13.3 You may terminate a current Service Term at any time via the appropriate controls available in your Clubhouse. In the case of termination of a current Service Term by you prior to its completion we reserve the right to charge you an appropriate sum reflecting administrative costs and lost call revenue as a consequence of your termination.
- 13.4 You may terminate this Agreement at any time on the provision to us of 30 days written Notice.
- 13.5 In the case of termination of this Agreement any current Service Terms shall be automatically terminated. In the case of termination of this Agreement by you prior to the completion of an agreed Service Term, we reserve the right to charge you an appropriate sum reflecting administrative costs and lost call revenue as a consequence of your termination.
- 13.6 Notwithstanding any other provisions of this Agreement, we shall have no liability to you for any loss or damages you suffer as a consequence of such termination.
- 13.7 The accrued rights of the parties as at termination or the continuation after termination of any provision expressly stated to survive shall not be affected or prejudiced.

#### **14 Force Majeure**

- 14.1 Neither party will be liable to the other for any delay in performing any of its obligations under this Agreement (other than its obligation to pay the agreed Fees) which have occurred as a result of circumstances which are entirely outside the control of either party. These include but are not limited to energy and power failures, third party telecommunications, non-availability and breakdown of equipment, Acts of God, Terrorism, Explosions, States of War and/or other hostilities.

#### **15 Intellectual Property**

- 15.1 All Intellectual Property Rights in our equipment, software and any other technology used by us in the provision of your Service Package remains with us or licensed to us by our suppliers unless expressly specified. You are licensed to use such Intellectual Property Rights solely to the extent properly required to receive the Services and/or the Services Packages from us subject to the terms of this Agreement and for no other purpose and you shall not make the same available to any third party without our prior written consent.
- 15.2 Without prejudice to the generality of clause 15.1, you acknowledge that our Services and/or Service Packages may incorporate software which has been specifically developed by us (whether or not designed to be used in coordination with open source software) and the Intellectual Property Rights in such software remain vested in us. You are licensed to use such software solely to enable you to obtain the benefit of the Services and/or Service Packages for your own use and for no other purposes.
- 15.3 Where the Services and/or a Service Package relates to the provision of voiceover services, the style of the voice and the script are not provided to you on an exclusive basis and may be used for other customers. Once a recording has been made, however, for your use, the same recording will not be provided to any other customer.
- 15.4 Where the Services and/or a Service Package includes the transfer to you of content, whether:
  - 15.4.1 Written content;
  - 15.4.2 Audio content, whether voice or other types of audio recording; or
  - 15.4.3 Visual content, whether in the form of static images or video recordings;

the Intellectual Property Rights in any such content remain vested in us, and transfer of content to you shall not be deemed to imply the transfer to you of any Intellectual Property Rights or exclusive use.

- 15.5 We have no obligation to review or edit any of your information or third party information which you store or transmit through Our Network or that of Our Chosen Carrier. However, we reserve the right to access, retain and disclose copies of such information for the purpose of:
- 15.5.1 Correcting, maintaining or improving the any part of the Service Package.
  - 15.5.2 Complying with applicable laws, regulations and statutory instruments or terms of licenses and contracts relating thereto.
  - 15.5.3 Observing the performance of the Service Package including monitoring Service Level Agreements.
  - 15.5.4 Retaining a record of activity on our equipment or that of Our Chosen Carriers.
  - 15.5.5 Complying with a request for information from any Court of competent jurisdiction or appropriately authorised body.
  - 15.5.6 Ensuring that you do not contravene our policy concerning Unacceptable Use and or Fraud Traffic.

## **16 Confidentiality**

- 16.1 You are required promptly to give us all the information we may reasonably need so that we can perform our obligations under this Agreement. We will keep a record of personal and/or organisation information you provide to us in connection with the Service Package.
- 16.2 You agree to provide up to date contact information, including a Correspondence Email Address at which you are able to receive email communications from any dmClub.net email address.
- 16.3 You agree to inform us immediately of any change to the contact details and other information you have provided to us.
- 16.4 You hereby agree and confirm that the information that you provide to us under this Agreement shall be true, accurate and complete in all respects.
- 16.5 We may contact you before, during and after the term of this Agreement to administer, evaluate, develop and maintain the Service Package.
- 16.6 Please note that we may monitor and/or record your telephone calls and emails for quality assurance, legal, regulatory and training purposes.
- 16.7 We will comply with our obligations under the Data Protection Act 1998 and any other applicable data protection and data retention legislation. You are also required to comply with all data protection and data retention legislation.
- 16.8 Subject to the provisions of clause 16.7 above, we reserve the right to retain any information submitted by you to us in connection with the performance of our duties under this Agreement, whether upon Registration or at any point thereafter, at our sole discretion.
- 16.9 All information relating to you collected by us in the course of providing the Service Package shall remain confidential subject only to the permitted uses of that information under this Agreement or as may be permitted or by any court of competent jurisdiction, by any governmental or regulatory authority or where there is a legal right, duty or requirement to disclose it. Without limiting the foregoing, you acknowledge that we may, where appropriate, disclose your information to the police and other emergency services.
- 16.10 In connection with this Agreement we, and any other companies or agencies authorised by us, may carry out credit checks and fraud prevention checks with one or more licensed credit reference and fraud prevention agencies and we may retain a record of the search. Information held about you by such agencies may be linked to records relating to other persons living at the same address and such records will be taken into account in credit checks and fraud prevention checks. Information from your application and payment details of your account will be recorded with one or more of these agencies and may be shared with other organisations to help make credit and insurance decisions about you and members of your household and for debt collection and fraud prevention.
- 16.11 We may also share the information which you provide with our affiliates or third parties for administration, data storage or processing purposes.

## **17 Indemnity and limitation of Liability**

- 17.1 If you do not comply, or any other person whom you allow to use the Service Package and/or the Services does not comply, with any provision of this Agreement, you shall indemnify and hold us harmless against all liabilities, claims, losses, damages or expenses arising directly or indirectly or in any way associated or suffered as a result of such non-compliance.
- 17.2 Nothing in this Agreement excludes or limits the liability of either party for death or personal injury caused by its negligence.
- 17.3 Our liability to you:
- 17.3.1 Under Part 1 of the Consumer Protection Act 1987;

17.3.2 for breach of any condition as to title or quiet enjoyment implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

17.3.3 for fraudulent misrepresentation, and;

17.3.4 for misuse of confidential information,

is not excluded or limited by this Agreement, even if any other terms of this Agreement would otherwise suggest that this might be the case.

- 17.4 We are not liable to you whether in tort (including negligence), contract, misrepresentation, restitution or otherwise for any delay in billing, direct or indirect loss of profits, anticipated profits, loss of earnings or revenue, or costs incurred by you, loss of business, goodwill, or anticipated savings or for any indirect or consequential loss or damage including but not limited to claims against you from third parties and loss of or damage to your data, even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the loss.
- 17.5 We are not liable to you in contract or tort (negligence) for any acts or omissions by or of you or any third party, including any registered dmClub Dealer, other telecommunications providers, computer suppliers, software suppliers, network and router suppliers and/or internet suppliers.
- 17.6 Each provision of this Agreement excluding or limiting our liability operates separately. If any provision of this contract is held to be invalid, in whole or in part, it shall not affect the enforceability of the terms in the remainder of the Agreement.
- 17.7 Without prejudice to the provisions of clause 20 (Dispute Resolution), you must bring any legal proceedings against us within 14 months of the date when you first become aware or ought reasonably to have become aware of the facts or alleged facts giving rise to such liability or alleged liability or within the relevant statutory limitation period, whichever is the earlier.
- 17.8 Any waiver of any provision within this Agreement will not be effective unless made in writing, and such waiver headed 'Written Waiver'.
- 17.9 Without prejudice to clauses 17.2 and 17.3, our total liability to you in contract, tort (including negligence), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement will be limited the total sum of payments you have made to us in connection with the Service Package in question over the 12 month period immediately preceding the date on which the claim arose.
- 17.10 We will not be liable under this Agreement for breach of any of its terms to the extent that the breach concerned arises from:
- 17.10.1 use of any Service Package other than in accordance with normal operating procedures as notified to you;
  - 17.10.2 any alterations to any Services or Service Package made by anyone other than us;
  - 17.10.3 any abnormal or incorrect operating conditions; or
  - 17.10.4 any other hardware or software being used with or in relation to any Service Package, unless this has been approved by us or the relevant statutory provider of the connection of apparatus to public communications networking.

## **18 Assignment or Transfer**

- 18.1 We may assign, sub-contract or otherwise transfer this Agreement to any third party, in our absolute discretion.
- 18.2 You may not assign, license or sub license, or transfer this Agreement to any third party, without our prior written consent.

## **19 Law**

- 19.1 This Agreement is governed by and shall be construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts. Nothing in this Agreement shall prevent us from applying to any court in any other jurisdiction for an injunction or other like remedy to restrain any customer from committing any breach or anticipated breach of this Agreement and for damages and other consequential relief.

## **20 Dispute Resolution**

- 20.1 You agree that where any dispute or difference arises relating to
- 20.1.1 Your Service Package, including but not limited to Fault reporting;
  - 20.1.2 These Terms & Conditions;
  - 20.1.3 Any other dispute or difference relating to this Agreement and the Parties mentioned therein:
- 20.2 the matter shall be addressed according to the Dispute Resolution Procedure as follows:
- 20.2.1 Both Parties will attempt to resolve the matter in correspondence by post, fax or email with dmClub Support;
  - 20.2.2 If the dispute cannot be resolved through dmClub Support the Party concerned must submit a formal complaint to the other Party in writing, setting out in clear and reasonable language the difference in question, within four weeks of receiving our initial resolution response. In the event of your submitting a formal complaint, we will address it by means of our Formal Complaint Procedure. We undertake to provide a final response within one calendar month of receiving a formal complaint.

20.2.3 If the matter cannot be satisfactorily resolved through the Formal Complaint Procedure, both Parties agree to refer the dispute to the arbitration of a single arbitrator to be agreed between the Parties. You undertake to notify us of your wish to refer the dispute to arbitration within four weeks of receiving the final response from our Formal Complaint Procedure;

20.2.4 If the matter cannot be satisfactorily resolved through arbitration the Parties shall pursue the matter through the English courts, under English law.

20.3 You agree that all information relating to either a Formal Complaint or other dispute shall remain confidential to the Parties until such time as the matter has been resolved or referred to the English courts.

## **21 Severance**

21.1 The Parties agree that, in the event that one or more of the provisions of these Terms & Conditions is found to be unlawful, invalid, or otherwise unenforceable, that those provisions shall be deemed severed from the remainder of these Terms & Conditions. The remainder of the Terms & Conditions shall be valid and enforceable.

## **22 Notification and Notice**

22.1 Unless otherwise stated in these Terms & Conditions, the Parties agree that all Notifications to be sent by us under the Agreement shall be in one or more of the following forms:

22.1.1 an email to your Correspondence Email Address;

22.1.2 an article in a dmClub Customer newsletter sent via email; or

22.1.3 a message in your Clubhouse.

Notices to be served by us under the Agreement shall be in writing and will take the following form:

22.1.4 an email sent to your Correspondence Email Address;

22.1.5 fax sent to the Fax Number provided in your Registration Data; and

22.1.6 printed letter sent to the postal address provided in your Registration Data.

Where Notifications \ Notices are served by email to your Registered Email Address, they will be deemed to have been received 1 hour after our records show them to have been sent.

Where Notices are served by you they shall be sent in writing, by email and post.

22.2 It is your responsibility that emails sent from the dmClub.net domain or sub-domain shall be received in your email system, whether it is under your control or operated by a third party, we shall take reasonable (in our judgement) steps to ensure that email from our systems can be verified as bona-fide.

## **23 Entire Agreement**

23.1 These Terms & Conditions, and any documents to which they refer, shall embody and set forth the entire agreement and understanding between the Parties and shall supersede all prior oral or written agreements, understandings or arrangements relating to the Programme or the relationship between the Parties. Neither Party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in these Terms & Conditions.

23.2 Certain Services, Products or Jobs that we may supply or provide to you may have supplementary terms and conditions which shall be separately advised.

## **24 General**

24.1 These Terms & Conditions shall be binding on the parties hereto, their respective successors and permitted assigns, heirs and/or legal representatives.

24.2 All communication between the Parties in connection with this their obligations under this Agreement shall be conducted in English.

24.3 Any time estimates given by us in respect of the Services or any Service Package are for guidance only and time shall not be of the essence in respect of any of our obligations under this Agreement.

24.4 Nothing in these Terms & Conditions shall create, or be deemed to create a partnership between the parties and neither of them shall have any authority to bind the other.

24.5 Should either party to these Terms & Conditions fail to exercise any conferred rights or benefits, it shall not be considered a waiver of such rights or benefits.

24.6 Only the parties to this Agreement may seek to enforce its terms.