

## **Terms and Conditions**

Please take the time to read these terms and conditions ("the **Terms**") carefully before using this website or completing any Order form. We may amend these terms at any time by posting the revised terms on our Web site or advise or generally issue the revised terms to the general public and or to our client/s or contacts.

TheDesert.com does not screen, review or control the listings and the domain names that are being offered for transfer, nor does it screen review or control any of the activities or statements of users of its services. TheDesert.com sole involvement is to facilitate a smooth and orderly transfer of domain name registrations. It is important that you exercise the degree of care that you would in any other commercial activity.

Only adults who can form legally binding contracts under applicable law can actively participate in the activities conducted through this Web site. By clicking on the "I Accept" button and filling out the registration information, by opening an account with TheDesert.com or otherwise participating in commercial activity conducted through the TheDesert.com Web site, you certify that you are 18 years of age or older, are competent to assume legally-binding obligations, and have the resources available to honour those obligations that you undertake. TheDesert.com reserves the right to refuse, limit or restrict its services for any reason at any time and in its sole discretion.

This agreement may not be amended or modified except in a written document signed by both parties.

These Terms shall apply to the contractual arrangements between you and us, Gamar Telecommunications (UK) Limited, Trading As TheDesert.com of 16 Park Street, Mayfair, London W1Y 3WD United Kingdom (registered number 2610987), and are accepted by you by using this website or completing the Order Form ("the **Agreement**"). No contract shall be made between you and us until we have acknowledged receipt of the Order Form by return e-mail ("Acknowledgement")

### **1. Definitions**

In these Terms:

1.1 the following words and expressions shall have the following meanings: -

"Data Protection Legislation"

means all data protection legislation applicable to English law in force from time to time including but not limited to the Data Protection Acts 1984 and 1998 (as from time to time amended re-enacted or replaced);

"Domain Name"

any domain name registered, listed or maintained by us on your behalf;

"Fees"

means the fees payable by you from time to time for the Services, as specified on the Site at the time of the relevant Order Form in respect of the relevant Initial Term and at the commencement of the relevant Renewal Term for each relevant Renewal Term as may be amended from time to time by us;

All fees for domain name transactions are typically paid by the Seller.

Other fees may be incurred for different services by the party requesting such services, such as appraisal fees. You are responsible for applicable taxes, costs, hardware, software, services and all other costs and expenses you incur for the participation in the activity conducted over our Web site. We may, in our sole discretion, add, delete or change any of the services provided or fees charged by TheDesert.com. These will be binding on the date that they become effective, similar to any other revision that is made to this agreement.

"DN Services"

means the service of registering and maintaining the registration of domain names as well as any ancillary administrative functions to be provided by us as more particularly described on the Site as amended and/or updated by us from time to time;

"E-Mail Services"

means the service of forwarding e-mail as well as any ancillary administrative functions to be provided by us as more particularly described on the Site as amended and/or updated by us from time to time;

"Hosting Services"

means the service of web-site hosting as well as any ancillary administrative functions to be provided by us as more particularly described on the Site as amended and/or updated by us from time to time;

"Initial Term" and "Relevant Term"  
as defined in clause 2;

"Intellectual Property Rights"

means any patent, copyright, registered design, trade mark, trade name, know-how or industrial or intellectual property right subsisting anywhere in the world and any applications to protect any of the above;

"Order Form"

means the on-line registration form found on the Site as it relates to whichever relevant Service you select which may be amended from time to time by us;

"Payment  
Method (s)"

means the on-line payment method(s) for payment of the Fees as described on the Site, or any other payment method requested by TheDesert.com, at the time of submission by you of the Order Form in respect of any relevant Initial Term or the commencement of the relevant Renewal Term for each Renewal Term which may be amended from time to time by us;

"Processing"

means the process of approval by us of your Registration Request for DN Services; or any other services offered by TheDesert.com

"Registration Request"

means your request for registering domain names as set out in the Order Form submitted by you or any other order form on TheDesert.com website received by us;

"Service(s)"

means such of the DN Services, E-Mail Services, Hosting and/or other Services offered on TheDesert.com website which are provided pursuant to the Agreement either taken together or separately as applicable;

"Site"

means TheDesert.com web site with URL:

[www.thedesert.com](http://www.thedesert.com)

"Submission"

means the submission by us of the Registration Request to the relevant registration body for registration;

1.2 unless otherwise specified, references to any statute or statutory provision are to that statute or statutory provision as from time to time amended extended or re-enacted;

1.3 the headings are for guidance only and shall not affect its interpretation; and

1.4 words in the singular shall include the plural and vice versa; words in the masculine shall include the feminine and neuter and vice versa; and words referring to persons shall include bodies corporate, unincorporated associations and partnerships.

## **2. Duration**

2.1 The Agreement will commence for the Services when we send you an Acknowledgement and will continue for a period of one year, two years or whatever other period stated in any particular case. (in each case "**Initial Term**") unless earlier terminated in accordance with these Terms will be renewed on the first or second (as the case may be) and each subsequent anniversary for further terms of one year each (in each case "**Renewal Term**") unless you notify us at least 30 days before the date for such renewal that you no longer require the relevant Services.

2.2 You acknowledge that the DN Service or any other services offered on the site shall commence when we start Processing (as applicable).

## **3. Fees and Payment**

3.1 You shall pay the Fee for the Service(s) by the Payment Method immediately upon despatch of the Acknowledgement, and any other subsequent Fee for the Services shall be paid immediately upon request.

3.2 If you fail to pay when due any amount payable under these Terms, your liability shall be increased to include interest on the overdue amount from the due date until the date of actual payment (after as well as before judgment) at the rate of 10% (ten per cent) above the base rate from time to time of Natwest Bank plc of United Kingdom. The interest will be calculated on a daily basis and compounded daily.

3.3 All Fees are exclusive of VAT or other taxes or duties(if applicable), which shall be paid at the rate, and in the manner prescribed by law and subject to clause 4. All Fees are non-refundable even if a Service is suspended, cancelled or transferred prior to the end of any relevant term.

## **4. Cancellation**

4.1 You are entitled to cancel the DN Services without charge within 7 days of Acknowledgement if we have not started Processing or if the process involved is not instant registration

4.2 You shall not be entitled to cancel the DN Services:

(i) if we have started Processing; or

(ii) 7 or more days after Acknowledgement.

4.3 You are entitled to cancel the Hosting Service or the E-Mail Service without charge and / or with a full refund within 7 days of our receipt of the relevant Fee for the relevant Service. We may at our discretion charge administration or a processing fee,

## **5. Our Obligations and Limitations**

5.1 We warrant that we will use reasonable endeavours to provide the Services with reasonable care and skill subject to the following for which we have no liability:

5.1.1 You appreciate that the success of the Registration Request is subject to many factors outside of our control. An example of such a factor is that we are subject to the terms & conditions of third party registration bodies ("**Third Party Body**") that, under certain circumstances, may refuse to register a particular domain name. With these external factors in mind we cannot guarantee the success of any Registration Request but will provide a full refund of the Fees in the event of non - registration.

5.1.2 The registration of any Domain Name and its on-going use may be subject to a Third Party Body's terms and conditions of use. You are responsible for ensuring that you are aware of those terms and conditions and can and do comply with them. Details of these terms and conditions can be found at the following web sites: - [Network Solutions](#) (.com, .net, .org domains) [DomainSystems](#). (.com, .net, .org) BulkRegister (.com, .net, .org)

5.1.3 Any Domain Name registered by us on your behalf may subsequently be challenged and/or cancelled by persons other than us.

5.1.4 We shall endeavour to meet any dates agreed for the obtaining of the names and domains requested by you, but such date shall be an estimate only and we accept no liability for failure to meet such date or dates.

5.1.5 You appreciate that it is not possible to guarantee continuous, uninterrupted and corrupt-free use of our server, that there may be situations where our server is prevented from working effectively or at all and that this may lead to a breakdown in the Hosting Services and/or loss and/or damage of some or all of the contents of your web site pages and/or data and/or misrouting of e-mails and/or non-receipt by you or your intended recipient of any e-mails. You understand that we cannot give any warranty or accept any liability for such interruptions to the Services or for the loss of (or damage to) any of the contents of your web site pages, data or any e-mails. It is your responsibility to maintain adequate insurance in respect of any loss or damage to your web site pages, data and e-mails. We accept no responsibility for any consequential loss in your business operations at any time if we cannot meet the service levels of our site.

5.2 We shall be entitled on reasonable grounds and at our sole discretion to refuse to process any Registration Request although we shall use our reasonable endeavours to explain our decision and will provide a full refund of the Fees in the event of non - registration.

5.3 We accept no responsibility in respect of the use for Domain Names or any Service by you in any dispute between you and any other individual organisation regarding a Domain Name. This must be resolved between the parties concerned and we will take no part in any such dispute. Although we have no obligation to monitor the Services we reserve the right at our sole discretion, to either suspend or cancel the

Domain Name or any Service, and/or make appropriate representations to the relevant naming authority.

5.4 We are not liable and accept no responsibility for any dispute howsoever arising you may have with any third party due to your direct or indirect use of the Services.

5.5 We reserve the right at all times to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or material, in whole or in part, in our sole discretion.

## **General**

5.6 EXCEPT AS EXPRESSLY SET OUT IN THESE TERMS WE DO NOT MAKE ANY OTHER WARRANTY, REPRESENTATION OR PROMISE IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY EXCLUDE ALL LIABILITY FOR ANY AND ALL IMPLIED WARRANTIES, EXCEPT THOSE NOT EXCLUDABLE BY LAW, EXPRESS TERMS AND ANY LIABILITY FOR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LIABILITY HOWSOEVER OCCASIONED.

5.6.1 You agree that use of TheDesert.com services is at your sole risk and that the services are provided on an "as is" and an "as available" basis. TheDesert.com expressly disclaims all warranties of any kind, express or implied, including, but without limitation, any implied warranty of merchantability, fitness for a particular purpose and non-infringement. TheDesert.com makes no warranty that the services will meet your requirements, that they will be uninterrupted, timely, secure, or error free. Nor does TheDesert.com make any warranty as to the results that may be obtained from the use of the services or as to the accuracy or reliability of any information obtained from the TheDesert.com Web site. You understand and agree that any material and/or data downloaded from the TheDesert.com Web site or any services obtained through the services provided by TheDesert.com is done at your sole discretion and risk and that you will be solely responsible for any damage resulting from any such download or use of such information or other related transaction. No advice or information that you may obtain from TheDesert.com or through the services provided by TheDesert.com shall create any warranty not expressly stated therein.

5.7 You agree that we shall not be liable either in contract, tort, negligence, statutory duty or otherwise, for any loss or damage (including loss or damage which is reasonably foreseeable or occurs naturally in the course of things) including, without limitation, damage for loss of business, loss of sales, loss of profits, loss of reputation, or any other financial loss or damage, resulting from or in relation to:

5.7.1 any acts, omissions, failures or delays occurring on or without any negligence on our part, or occurring on or in relation to those aspects of the Services not under our direct control;

5.7.2 the consequences of any unsuccessful or failed registration or the failure of our servers;

5.7.3 any claims by such third parties that the domain names registered (or attempted to be registered) by us on your behalf infringe the trade marks (whether registered or unregistered) or other rights of such third parties;

5.8 You also agree that (except in relation to such liability as has been expressly excluded) that we have no liability in respect of any claims unless you notify us of such claims within one year of it arising and the maximum aggregate liability of us in contract, tort, negligence, statutory duty or otherwise, arising out of or in connection with the provision of the Services which shall be limited to the Fees paid by you in respect of the

Services which are the subject of such claim. This limit shall also apply in the event that any exclusion or other provision contained in this Agreement is held to be invalid for any reason and we become liable for loss or damage that could otherwise have been limited

5.9 Nothing in this Agreement shall exclude:

5.9.1 our liability for death or personal injury arising from the negligence of us or our servants or agents; or

5.9.2 any other liability which it is prohibited from excluding by law.

## **6. Your Obligations**

You warrant and undertake to us:

6.1 that your performance of this Agreement including the details of the Registration Request and the Domain Name and your use of the Services will not infringe any third party rights of any nature (including but not limited to Intellectual Property Rights) or be unlawful in any way and you will indemnify us against any and all actions, claims, losses, costs, damages and expenses ("Claims") incurred by us in defending such Claims;

6.2 that you will abide by the terms and conditions of any Third Party Body process including, without limitation, to the submission of any arbitration proceedings they might promote;

6.3 on behalf of yourself and for any other party using your access to the Hosting Services or the e-mail Service or any other Service offered on the site

6.3.1 not to use such Services in such a way which,

(a) is in breach of the laws of any jurisdiction, or the international conventions, codes or regulations applicable to the internet including but not limited to infringement of Intellectual Property Rights, defamation, theft, fraud, drug-trafficking, money-laundering and terrorism;

(b) may incite violence, sadism, cruelty or racial hatred;

(c) may facilitate prostitution or paedophilia;

(d) is pornographic, obscene, indecent, abusive, offensive or menacing;

(e) which gives the impression that the message or posting originated from our network.

6.3.2 only to use the Services for lawful purposes;

6.3.3 not to create and/or introduce into our server or (by using the Services any other party's server) any virus or contaminating program or advise any other party how to do so;

6.3.4 not to invade the privacy of users of the internet in general, including sending and receiving unsolicited e-mails nor infringe any data protection legislation throughout the world;

6.3.5 to maintain confidentiality of your login names, passwords and other confidential information relating to your access to the E-mail Services or the Hosting Services;

6.3.6 not to tamper with routing and domain name services in order to "spoof" other computer networks;

6.3.7 not to falsify or delete any author attributions, legal or other proper

notices;

6.3.8 not to do or permit anything else which would damage the name and reputation of us or otherwise detrimental to us;

6.4 that you have the right, interest, title, power and authority to enter into and perform your obligations under the Terms;

6.5 that the details you supply on the Order Form or any other details you supply in furtherance of the Agreement shall be and remain true, accurate and correct;

6.6 you undertake not to sell to any other person (whether in money or money's worth, the giving or withholding of any business or benefit of any kind or description), either directly or indirectly, any of the Services;

6.7 to comply with any other rules, procedures or policy which we may reasonably promote for the proper provision of the Services from time to time.

6.8 TheDesert.com Web site is only a venue to facilitate the transfer and exchange of information pertaining to domain names that are available for transfer. Other than assisting in the facilitation of the commercial activity, we are not involved in, and are not a party to, the actual transaction between Buyer(s) and Seller(s). TheDesert.com has no control over the accuracy, quality or legality of advertised domain names, the truth or the accuracy of the listings, the right and the ability of the listed Seller to transfer the domain name or the ability of the Buyer to consummate a transaction. We cannot and do not control whether or not Seller(s) or Buyer(s) will complete a transaction. Additional risks arise out of dealings with foreign nationals, underage persons or people acting under false pretence or making deceitful representations, all of which are borne solely by the Buyer or Seller, as appropriate.

TheDesert.com does not confirm that users who access its Web site are who they claim to be. We encourage you to exercise reasonable, safe business practices as you would in any other commercial activity.

## **7. Indemnity**

You shall indemnify and keep fully and effectually indemnified from and against all liability, claims, losses, costs, expenses, loss of profits, business interruption, and other pecuniary or consequential loss (including reasonable legal costs and expenses) suffered or incurred by us as a result of any breach of this Agreement, any data or content on your web site or in your e-mails or any act or omission in relation to the use or non-use of the Domain Name the Hosting Services or the E-mail Services or any other services on TheDesert.com by you, your employees (if any) or any person authorised by or under the control of you.

## **8. Lien**

In the event of a failure by you to pay including, for example, a charge back by a credit card company in connection with the payment of the Fees, you agree that:

(a) we can cease to provide or suspend any of the Services and can prevent that Domain Name and/or any other Domain Name becoming available to you; and

(b) to the extent permitted by law, all rights and interest in the registration shall be transferred to us as the paying entity for that registration to the registry and that we reserve all rights regarding such Domain Name including, without limitation, the right to make the Domain Name available to other parties for purchase. We will reinstate your

Domain Name registration solely at our discretion.

(c) In the event of a failure by the client to pay in full for any goods or services, the ownership of these goods and services will remain with TheDesert.com. This will apply until the full amount due is received by TheDesert.com including delivery/transaction/taxes /duties/levies/ customs or interest due on the total transaction. Any goods and services delivered to any particular address as requested by the client will be kept in good condition and in the same working order as delivered. Any damage or spoilage will be charged as per market rates plus administration and carriage.

## **9. Non-interference**

You will not yourself, or allow or enable another, to directly or indirectly interfere or attempt to interfere with the operations of the TheDesert.com Web site, the services provided by TheDesert.com and any activity on the TheDesert.com Web site. You will not take any action, which may impose an unreasonable or disproportionately large load on our computing infrastructure. You will not insert any material that may contain any viruses, Trojan horses, worms, time bombs, or other software routines that may damage, interfere with, intercept or otherwise adversely affect the TheDesert.com computer systems. You are solely responsible for your password used to access the TheDesert.com Web site, and you will not disclose it to anyone else or share it with any third party or otherwise use it for any unauthorized purpose. TheDesert.com may, from time to time, in its sole discretion initiate feedback information. You will not take any action that will undermine the integrity of the feedback system, such as falsifying information about yourself or about any other party, using aliases or otherwise attempt to manipulate the feedback. You agree to comply with other rules regarding TheDesert.com, which are posted at various pages throughout the TheDesert.com Web site. These rules have as binding an effect as this User Agreement and are incorporated into this Agreement by reference and may be subject to change by TheDesert.com without prior notice and in its sole discretion.

## **10. Information and Privacy**

TheDesert.com cannot and does not control information that other users make available through the TheDesert.com Web site. Even though prohibited by this Agreement and by TheDesert.com general policies, people may nevertheless provide information that is false, harmful, or deceptive. TheDesert.com has a Privacy Policy that covers its use of your information, which is incorporated herein by reference and the terms of which you acknowledge that you have, read and accept and agree to abide by such terms. This policy may change in the future and the then-current policy shall govern at any given point in time. Please check this policy from time to time for possible changes that may have been made. You are solely responsible for any information that you provide to us or to any other person during and in the course of any activity conducted with regard to and through the TheDesert.com Web site and the services provided therein. We may take any action with respect to such information we deem necessary or appropriate in our sole discretion in order to avoid potential liability, losses or disruption to our services. You hereby grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free license to exercise any right you have in such information, including copyrights and publicity rights in any media now known or not currently known, in accordance with the TheDesert.com.com Privacy Policy and to further the goals contemplated by this Agreement.

## **11. Limitation of Liability**

In the event that you have a dispute with any other user, including with another party to the transaction, facilitated through the TheDesert.com

Web site, you agree to release TheDesert.com, and its agents, officers, directors and employees from any and all claims, demands and damages (actual or consequential) of every kind and nature, disclosed or undisclosed, arising out of or in connection with any such dispute ("Claim or Demand"). You agree to indemnify and hold TheDesert.com (including, its officers, directors, employees, agents and representatives) harmless from any such Claim or Demand, including, without limitation, any claim or demand that may arise from or in connection with, your failure to abide by the terms and conditions of this Agreement.

IN NO EVENT SHALL THEDESERT.COM BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICES PROVIDED BY THEDESERT.COM OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES, OR RESULTING FROM ANY DATA, INFORMATION OR SERVICES OBTAINED OR TRANSACTIONS ENTERED INTO THROUGH OR ARISING FROM OR IN CONNECTION WITH THE SERVICES PROVIDED BY THEDESERT.COM OR RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF TRANSMISSIONS OR DATA, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLES, EVEN IF THEDESERT.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THEDESERT.COM'S LIABILITY TO YOU OR ANY THIRD PARTY IN CONNECTION WITH OR ARISING FROM THIS AGREEMENT EXCEED THE LESSER OF EITHER THE AMOUNT OF FEES YOU SHALL PAY TO US IN THE TWELVE (12) MONTHS PRIOR TO THE ACTION GIVING RISE TO SUCH LIABILITIES OR A MAXIMUM SUM OF \$500. (FIVE HUNDRED US DOLLARS)

## **12. Data Protection**

You agree that you have read and understood the Data Protection Notice located on the Site and have consented or not consented (whichever is relevant) to allow us to use your personal details in accordance with the terms of the Data Protection Notice.

## **13. Agents and Licenses**

13.1 You agree that, if you are registering a Domain Name for someone else, you represent that you have the authority to nonetheless bind that person as a principal to all of these Terms.

13.2 You agree that if you license the use of the Domain Name registered to you to a third party, you nonetheless remain the Domain Name holder of record, and remain responsible for all obligations under these Terms.

## **Transferability of Domain Name Service**

Domain names are the result of, and are subject to all of the conditions, limitations and restrictions contained in, domain name service agreements between the Seller and a third party domain name registrar or other service provider. As such, the transferability of domain name service may be limited, prohibited, or otherwise subject to conditions imposed by the domain name registrar or service provider. Nothing in this Agreement or appearing on the TheDesert.com Web site shall be construed to imply that the Seller possesses any rights to a domain name beyond those specified in the Seller's service agreement with the relevant domain name registrar or service provider. The term "domain name," as used herein, shall refer to any rights the Seller may possess with regard to the registration of a particular domain name under its domain name service agreement with a domain name registrar or other service provider.

## **Bidding and Buying**

TheDesert.com relies on the integrity of the users of its services to

honour their commitments. If you make an offer to purchase the rights to a domain name, and your offer is accepted, you are obligated to complete the transaction. You cannot place an offer that is manipulative, such as placing an offer that you know you do not have at your disposal sufficient resources to cover.

### **Listing and Selling**

As a Seller of a domain name listed with TheDesert.com, you represent that: (1) you have registered the domain name with the appropriate domain name registrar or other registration authority; (2) your registration of the domain name is current and not subject to deletion, cancellation, rescission, or deactivation by the applicable domain name registrar or other registration authority; (3) you have not taken any action that would impair your ability or right to transfer the domain name registration and no such action has been taken against you; (4) the domain name is not the subject of any legal proceedings challenging your right to register or use the domain name; (5) you will accurately describe the subject listing. You will not describe, or link to, other items, goods, or services that you are not listing with TheDesert.com or that you do not otherwise have the right to provide such links or descriptions thereto. You will not under any circumstances list or transfer the rights to any domain name for which you do not have sufficient right to transfer or that it is illegal to transfer under applicable law, statute, ordinance or regulation; any domain name that infringes or violates the proprietary rights of any third person or any other domain name which in TheDesert.com's sole discretion, is inflammatory, offensive, inconsistent with TheDesert.com's general policies, or otherwise may infringe any proprietary right of any third party. If your offer to transfer the domain name is accepted, you must complete the transaction. As a Seller, you agree that users may comment on their experiences with you in the feedback section, as such may be established by TheDesert.com from time to time, and you release TheDesert.com and the users of its services, from any liability arising from any such comments.

If you receive any offer to purchase the rights to a domain name at or above your stated minimum price, then you are obligated to complete the transaction. You may not place any bids or offers to purchase the domain name that you have listed for sale, either under your own name, an alias, or any entity in which you maintain a controlling interest. Without limitation of any other remedy, TheDesert.com reserves the right to suspend, terminate and remove your listing at any time it may deem fit if it reasonably believes that you have engaged in any fraudulent activity in connection with your posting or otherwise with any activity conducted with the TheDesert.com Web site, if TheDesert.com is of the opinion that you have breached any of your representations or any of its general policies and guidelines, such as if it is of the opinion that you are infringing upon the proprietary rights of any other party, or at such other time as TheDesert.com may deem fit.

### **14. Termination**

14.1 We shall be entitled to suspend and/or terminate the Agreement and/or restrict any of the Services immediately upon written notice to you in any of the following circumstances:

- (a) in the event of your non-payment of Fees in accordance with clause 3;
- (b) if you are in breach of any of your material obligations under the Terms and, if such breach is remediable, you fail to remedy the breach within 14 days of the notice requiring it to do so; or
- (c) (if applicable) if you make any voluntary arrangement or composition

with your creditors; or you have a bankruptcy order made against you or you die.

14.2 Either party shall be entitled to terminate this Agreement immediately upon written notice to the other party if either party becomes insolvent, ceases to trade (or in the reasonable opinion of the other is likely to cease to trade) or has a liquidator, receiver, administrator or administrative receiver appointed or enters into any arrangement with its creditors or is wound up otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of its obligations, or is unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986, or is made bankrupt or undergoes a similar or analogous event in any jurisdiction; and you shall not be liable for any losses incurred by us as a result of such termination.

14.3 Any termination of the Agreement, howsoever occasioned, shall not effect any accrued rights or liabilities of either party neither shall it effect the coming into force or the continuance in force of any provision of these Terms which is expressly intended to come into or to continue in force on or after such termination.

14.4 On termination of this Agreement for whatever reason we reserve the right to:

- (a) suspend, cancel, transfer or modify your Domain Name.
- (b) suspend or cancel the E-mail Services; or
- (c) suspend or cancel the Hosting Services and remove all of your data located on our server. We will hold such data for a period of 14 days and allow you to collect it at your expense, failing which we shall be entitled to delete all such data. We shall further be entitled to post such notice in respect of the non-availability of your web site pages as we think fit.

14.5 You agree that TheDesert.com may, in its sole discretion, terminate this Agreement, or any commercial activity or other use of the services provided by TheDesert.com under this Agreement and through the TheDesert.com Web site immediately and without any notice. Without limiting the foregoing, TheDesert.com may terminate this Agreement if TheDesert.com determines in its sole discretion that you have acted inconsistently with the obligations or the spirit of this Agreement or of other TheDesert.com policies; or if TheDesert.com determines in its sole discretion that you have infringed upon or tried to infringe upon the proprietary rights of others; if any information that you have provided TheDesert.com is found in TheDesert.com' sole discretion to be false or that we have been unable to authenticate or verify the veracity of such information.

## **15. Force Majeure**

15.1 We shall not be liable for any delay in performing or for failure to perform any obligations under the Terms to the extent that the failure is caused by an Event of Force Majeure (as defined in clause 15.2 below). Any such delay or failure shall not constitute a breach of the Agreement, and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.

15.2 For the purposes of these Terms an "Event of Force Majeure" shall mean any circumstances beyond our reasonable control, including without limitation the following:

- (a) acts of God;
- (b) outbreak of hostilities, riots, civil disturbance, acts of terrorism;

(c) fire, explosion, flood, sand storms, fog or bad weather;

(d) power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles (including without limitation internet routers, gateways, servers, domain names servers and other internet infrastructures);

(e) theft, malicious damage, malicious cyber attack, hacking activity, strike, lockout or industrial action of any kind.

15.3 Notwithstanding anything to the contrary stated in the Terms, if any Event of Force Majeure shall continue for a period of 90 days or more, then you shall be entitled to terminate the agreement forthwith upon written notice.

## **16 Notices**

Any notice to be given or served under these Terms shall be in writing and shall be delivered personally or sent by facsimile or by first class post to the party to be served at the address set out in either the Order Form or Site (or such other address as either party may from time to time notify in writing to the other) and shall be deemed to have been served: -

(a) immediately in the case of personal delivery;

(b) in the case of facsimile on the next business day following the time of transmission subject, in the absence of a written acknowledgement, to the original notice being sent by post or by personal delivery in accordance with this clause not later than the next business day after such transmission;

(c) in the case of postal delivery, on the second business day following the date of posting (the fifth business day if posted to another country) or on acknowledgement of receipt if sooner.

## **17 Miscellaneous**

17.1 This Agreement constitutes the entire understanding between the parties concerning the provision of the Services, and replaces, supersedes, and cancels all previous arrangements, understandings, representations or agreements relating thereto. For the avoidance of doubt each party irrevocably waives any right it may have to seek a remedy for any misrepresentation which has not become a term of this Agreement, as well as any breach of warranty or undertaking other than those contained in this Agreement (whether express or implied, statutory or otherwise), unless such misrepresentation, warranty or undertaking was made fraudulently. This Agreement shall apply and prevail over any terms and conditions (whether conflicting or not) contained or referred to in any documentation submitted or provided by you.

17.2 You may not without our prior written approval assign, transfer, licence or deal with your Domain Name or with any of your other rights under the Agreement or sub-contract any of your obligations. We may assign or sub-contract any of our rights under the Agreement and may sub-contract any of our obligations.

17.3 All amounts due from you to us under this Agreement shall be paid in full without any set-off, destruction or withholding (including, without limitation, for or on account of any counterclaim).

17.4 Both parties shall be deemed to have the status of an independent contractor, and nothing in the Terms shall be deemed to place the parties in the relationship of employer-employee, principal-agent, partners, or joint venturers. Both parties shall be responsible for any taxes or charges on the payments received by it hereunder.

17.5 If at any time any provision of the Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect:-

(a) the legality, validity or enforceability in that jurisdiction of any other provision of the Terms; or

(b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of the Terms.

17.6 No failure or delay by either party in exercising or enforcing any right, power, or remedy which arises under the Terms or from any breach of its provisions shall operate as or be deemed to be a waiver of that or any other right, power or remedy or of any subsequent exercise of such right, power, or remedy. No waiver or modification of any provision of the Terms shall be effective unless in writing and signed by the party against whom such waiver or modification is sought to be enforced.

17.7 Each provision of this Agreement excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or other of those provisions is held inapplicable or unenforceable in any circumstances and shall remain in force notwithstanding the termination of this Agreement howsoever occasioned.

17.8 You agree to comply with all applicable laws, statutes, ordinances, and regulations regarding your use of the TheDesert.com Web site, the services provided therein, and the participation in any active commercial activity conducted in or through the TheDesert.com Web site. Other than as expressly stated in this Agreement, there is no agency, partnership, joint venture, employer, employee, franchiser or other legal relationship between TheDesert.com and yourself. Unless explicitly stated otherwise, any notices shall be given by e-mail to (info@theDesert.com) to the e-mail address you provided to TheDesert.com during the registration process. Alternatively, we may give you notice by certified mail, postage prepaid, to the address provided to us during the registration process. You may not assign, transfer, resell or sublicense your rights or obligations under the terms and conditions of this Agreement.

17.9 We agree that the provisions of these Terms are personal to us and are not intended to confer any rights on any other third party. The Contracts (Rights of Third Parties) Act 1999 shall not apply to our Agreement or to any provision of the Terms. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck to the extent of such invalidity or unenforceability, and the remainder thereof, as well as the remaining provisions of this Agreement shall be fully enforced. The failure of TheDesert.com to act with respect to a breach by you or others does not waive our right to act with respect to subsequent similar, or the same, breach. This Agreement sets forth the entire understanding and agreement between us with respect to the subject matters hereof and may not be amended other than as provided for in this Agreement.

17.1.1 Exchange member will be responsible for providing accurate and precise description of good/s or service/s required i.e. size, colour, model, edition, shape, version etc... and the name, contact address, telephone, fax, email, website address of known supplier or preferred supplier if currently known or known in past dealings or listings in any journal, directory, guide or any other information or media source. An Exchange member will be allowed to ask for a maximum of 5 requests for information in any 12 months period beginning from the date of membership. The total time commitment for information gathering will be 5 hours maximum per annum. If the Exchange member has used up 5 requests for information or the total time devoted by the Exchange exceeds 5 hours, which ever occurs first and no purchase is made via the Exchange, then the Exchange member will be required to submit an agreed sum of money or a agreed amount for each enquiry or extra time

required to fulfil the request for information. The Exchange will receive a minimum commission of 2.5% of the total value of the Exchange member transaction. The minimum commission payable will be US\$50 per transaction, unless agreed otherwise in writing and accepted by TheDesert.com. The Exchange reserves the right to request and agree a particular commission on any transaction at all times from the Exchange member or any manufacturer, supplier, marketer, agent, distributor, individual company or trade organisation. The Exchange reserves the right to decline to provide information on any particular service or goods at any time, without consulting or giving any reason to the Exchange to member. In such instance the Exchange member will be informed of this decision at the contact details provided. The Exchange will at all time endeavour to provide all reasonable information on reasonable commercial and ethical goods and services.

17.1.2 TheDesertB2Bventures provide information and advice on a particular commercial issue or opportunity. These services are offered with out any responsibility or liability as to the viability of such commercial ventures. Any loss or consequential loss or profit generated from such ventures will be the entire responsibility of the client. As in any commercial situation the client must ensure that they take all reasonable care in taking and accepting advice. All advice offered by TheDesert.com is not guaranteed for success. Any business venture can succeed or fail according to many factors. TheDesert.com will provide information, which in its sole opinion is good, accurate and commercially acceptable at the time. All such information or advice is offered on E&OE basis.

You agree that regardless of any statute or law to the contrary, any contract arising out of or related to use of the services provided by TheDesert.com, must be filed within Three (3) months after such claim or cause of action first arose or shall be forever barred. TheDesert.com Web site may contain links to and from other Web sites on the Internet that are owned and operated by other parties. You agree and acknowledge that TheDesert.com is not responsible for the availability of, or the content located on or obtained through any such other Internet Web sites. If you have any concerns regarding such links or the content located on such other Web sites, you should contact the Webmaster or site administrator for those respective Web sites. TheDesert.com does not verify the accuracy of the information and content provided for in such third-party Web sites, and providing such information or links cannot and should not be construed as support, backing, or other endorsement by TheDesert.com of such site and/or information.

TheDesert.com trade name, logo, trademark, software, databases, reports, Web site and information are proprietary, and TheDesert.com retains all rights, title and interest therein. By becoming a member or subscriber to the services provided by TheDesert.com, you do not acquire any rights or licenses over such or over TheDesert.com's assets, rights or licenses, other than as what is explicitly granted to you under this paragraph. You may not use the information contained in, or through the services provided by, the TheDesert.com Web site other than for the explicit purposes contemplated by this User Agreement. You may not transfer, or otherwise provide access to, such information to any unauthorized third party, and you may not use such information other than for the specific purposes described in this Agreement. By using TheDesert.com Web site and using the information contained in this Web site, you agree to the terms of this Agreement. We welcome you to the TheDesert.com Web site.

## **18 Law and Jurisdiction**

The Agreement shall be governed and interpreted in accordance with the laws of England and Wales and the parties submit/accept and agree to the jurisdiction of the English courts.

Gamar Telecommunications (UK) Limited T/A TheDesert.com.

TheDesert.com is trademark and the trading name of Gamar  
Telecommunications (UK) Limited.

Registered Office: 16 Park Street, Mayfair, London W1Y 3WD United  
Kingdom (registered number 2610987)