Terms and Conditions - Domain Names

1.   Interpretation

1.1   Definitions. In these Conditions, the following definitions apply:

Business Day, means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date, has the meaning set out in clause 2.2.

Conditions, means these terms and conditions as amended from time to time in accordance with clause 13.7.

Contract, means the contract between Computer-eyez and the Customer for the use of the Product during the Term in accordance with these Conditions and the Order.

Computer-eyez, means Computer-eyez (South) Limited, a company registered in England and Wales under company number 5882648, with its registered office Trafalgar House, Quarry Road, Newhaven, East Sussex, BN9 9DD.

Customer, means the person or firm who purchases the use of the Product from Computer-eyez.

Data Protection Legislation, the Data Protection Act 1998 implementing the Directive 95/46/EC on the protection of individuals with regard to the processing of Personal Data, the Privacy and Electronic Communication (EU Directive) Regulations 2003 and all current and subsequent applicable laws relating to the processing of personal data and privacy including where applicable the guidance and codes of practice.

Domain Name(s), means the domain name(s) set out in the Order.

DRS Policy and Procedure, means Nominet's dispute resolution procedure which can be found at http://www.nominet.uk/domains/resolving-uk-domain-disputes-and-complaints/, and as updated from time to time.

Force Majeure Event has the meaning given to it in clause 11.1.

Intellectual Property Rights, means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Nominet, means Nominet UK, a company registered in England and Wales under company number 3203859, with its registered office at Minerva House Edmund Halley Road, Oxford Science Park, Oxford, OX4 4DQ.

Order, means the order form in relation to the use of the Product by the Customer.

Payment Period, means the payment period set out in the Order.

Personal Data, shall have the meaning giving to it in the Data Protection Legislation.

Product, means the Domain Name(s) set out in the Order.

Product Fee, has the meaning set out in clause 7.1.

Proscribed, means that the Domain Name would on the face of it (i) tend to indicate, comprise or promote a serious sexual offence and/or (ii) that there is no legitimate use of the Domain Name which could be reasonably contemplated.

Register, the database of domain names that Nominet administer.

Renewal Notice, shall have the meaning given to it in clause 4.5.

Searchable WHOIS means a service provided by Nominet under contract which provides the facility to search WHOIS data by a registrant or for domain names where a particular string of characters appear in the domain name.

Term, means the term set out in the Order.

WHOIS, means a service provided by Nominet which allows members of the public to check whether a domain name exists.

1.2 **Construction**. In these Conditions, the following rules apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

2. Basis of contract

2.1 Receipt by Computer-eyez of a signed Order constitutes an offer by the Customer to purchase use of the Product for the Term in accordance with these Conditions.

2.2   The Order shall only be deemed to be accepted when Computer-eyez confirms acceptance of a signed Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3   **The Contract is between Computer-eyez and the Customer but please note that this Contract is subject to the Customer entering into a separate contract with Nominet. By purchasing the Product the Customer is entering into a contract with Nominet, their terms (which may be updated form time to time) can be found at http://www.nominet.org.uk/go/terms.**

2.4   The Contract (and the documents referred to herein) constitute the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Computer-eyez which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by Computer-eyez and any descriptions of the Product or illustrations or descriptions of the Services contained in Computer-eyez's catalogues, brochures or else where are issued or published for the sole purpose of giving an approximate idea of the Product described in them. They shall not form part of the Contract or have any contractual force.

2.5   These Conditions and the Order apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.   Product

3.1   The Product is described in the Order.

3.2   Computer-eyez reserves the right to amend the specification of the Product if required by any applicable statutory or regulatory requirements.

4.   Computer-eyez obligations

4.1   Computer-eyez shall use reasonable endeavours to supply the Product for the Term in accordance with the Order.

4.2   Computer-eyez shall liaise with Nominet on the Customer's behalf. The Customer acknowledges and accepts that Computer-eyez may forward information to the Customer on behalf of Nominet, and that Nominet may contact the Customer directly.

4.3   In the event the Customer requests that Computer-eyez assists the Customer beyond what Computer-eyez would consider (in its sole discretion) is reasonable, such assistance will be considered an additional service and will not form part of the Contract.

4.4   Where requested by the customer to take action or make changes to the Product, Computer-eyes will only take action or make changes to the Product (or request that Nominet does so) during the Term where it is satisfied it has a valid request to do so.

4.5   Computer-eyez will notify the Customer (at the most up to date address provided by the Customer) 45 days/30 days and 15 days prior to the expiration of the Term that the use of the Product is due to expire (**Renewal Notice**). Should the Customer wish to renew the Product, the Customer will be required to submit a new Order and the renewal will be regarded a separate contract. The costs for the renewal will be set out in the Renewal Notice. Where the customer does not respond to a renewal notice Computer-eyez will not take steps to renew the Product and the Domain Name will lapse.

5.   Customer's obligations and promises

5.1   The Customer shall:

   5.1.1   Where purchasing a top level domain as set out in the Order, shall comply with any additional conditions as set out in the Order;

   5.1.2   ensure that where the Customer is an individual, that individual is over 18;

   5.1.3   ensure that the Product is being purchased for business purposes only;

   5.1.4   ensure that the information provided by the Customer in relation to the Product is true, complete and accurate;

   5.1.5   co-operate with Computer-eyez in all matters relating to the Product;

   5.1.6   keep Computer-eyez notified and up to date of its correct name, postal address, phone and email contact information including details of technical, administrative and billing contacts. This includes responding quickly to any request from Computer-Eyez or Nominet directly to confirm or correct the information on the Register;

   5.1.7   ensure that any other information provided to Computer-eyez or Nominet directly by the Customer is correct and up to date;

   5.1.8   notify Computer-Eyez (and where requested, Nominet) promptly about any legal proceedings which involve the Product;

   5.1.9   not use the Product in a way that Computer-eyez considers in its sole discretion, is likely to endanger any part of the domain name system, other internet users (including but not limited to the distribution of viruses and malware, phishing activity or facilitating distributed denial of service attacks), Nominet's systems and internet connections generally;

   5.1.10   not, by purchasing the Product or using the Product, infringe the Intellectual Property Rights (for example, trade mark) of any one else;

   5.1.11   adhere to the terms referred to in clause 2.3;

   5.1.12   not register any mortgage or charge against the Product;

   5.1.13   ensure it has the permission of any person whose Personal Data is to be held on the Register in line with clause 8 in relation to Personal Data;

5.1.14   ensure that the alphanumeric characters which constitute the Product are not Proscribed; and

5.1.15   ensure that it will not use the Product for any unlawful purpose.

5.2   The Customer shall pay Computer-eyez any and all reasonable costs, claims and expenses (whether direct or indirect) arising out of any claim that the Customer has broken any of the obligations in clauses 5.1.1 to 5.1.13 above.

5.3   Computer-eyez's right to rely on the obligations set out in clause 5.1 and the indemnity in clause 5.2 will continue to be available after the Product has been purchased and registered and will not be affected by the cancellation or transfer of the Product.

5.4   If Computer-eyez's performance of any of its obligations in respect of the Product is prevented or delayed or effected by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

5.4.1   Computer-eyez shall without limiting its other rights or remedies have the right to suspend the provision of the Product until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Computer-eyez's performance of any of its obligations;

5.4.2   Computer-eyez shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Computer-eyez's failure or delay to perform any of its obligations as set out in this clause 5.4; and

5.4.3   the Customer shall reimburse Computer-eyez on written demand for any costs or losses sustained or incurred by Computer-eyez arising directly or indirectly from the Customer Default.

6.   **Nature of the Product**

6.1   The Product is not an item of property and has no 'owner'. As a result:

6.1.1   Computer-eyez (and Nominet where appropriate) will not be bound by, or allow for the record on the Register, of any mortgage-related obligations;

6.1.2   Nominet own and keep all Intellectual Property Rights in the Register.

7.   **Charges and payment**

7.1   The price for the Product shall be the price set out in the Order (**Product Fee**).

7.2   The Product Fee shall be paid by within the Payment Period. Time for payment of any sums under the Contract shall be of the essence of the Contract.

7.3   All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Computer-eyez to

the Customer, the Customer shall, on receipt of a valid VAT invoice from Computer-eyez, pay to Computer-eyez such additional amounts in respect of VAT as are chargeable on the Product at the same time as payment is due for the Product.

7.4   The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Computer-eyez may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Computer-eyez to the Customer.

7.5   Any discount given by Computer-eyez is subject to payment in accordance with these Conditions, if payment is not received in accordance with these Conditions, Computer-eyez reserves the right to remove any applicable discount.

7.6   In the event that the Product Fee is not received in clear funds by Computer-eyez within the Payment Period, Computer-eyez have the right to (at its option):

   7.6.1   Delay the provision of the Product until the Product Fee is received; or

   7.6.2   Cancel the Contract immediately.

7.7   Computer-eyez will not refund any or all of the Product Fee, unless the amount of the Product Fee is erroneous.

8.   Personal Data

8.1   Computer-eyez will make (but not release it for any other purpose to any other person) the Customer's Personal Data available in the following ways:

   8.1.1   In accordance with the delivering the Product;

   8.1.2   allow for it to be included on the Register;

   8.1.3   allow for it to be included it on WHOIS and Searchable WHOIS. Should the Customer wish to opt out of having its address published it can do so by complying with Nominet's WHOIS Address Opt Out policy which can be found at http://www.nominet.uk/wp-content/uploads/2015/08/WHOIS-Opt-Out.pdf (if the Customer takes steps to opt out of having its address published it should notify Computer-Eyez of this immediately);

   8.1.4   give the Customer's personal data to people with a legitimate reason for asking for it (based on the exemptions in the Data Protection Legislation), including law enforcement agencies;

   8.1.5   give the Customer's Personal Data to Nominet and allow Nominet to use such data in accordance with its terms and conditions; and

   8.1.6   Allow use of it in accordance with Nominet's DRS Policy and Procedure.

8.2   The Customer can write to Computer-eyez to ask for a copy of the Personal Data it holds in relation to the Customer.

8.3   By purchasing use of the Product the Customer agrees to Computer-eyez using its Personal Data as set out in this clause 8.

9.   Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1   Nothing in these Conditions shall limit or exclude Computer-eyez's liability for:

9.1.1   death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

9.1.2   fraud or fraudulent misrepresentation;

9.1.3   breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

9.1.4   breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

9.1.5   defective products under the Consumer Protection Act 1987.

9.2   Subject to clause 9.1:

9.2.1   Computer-eyez shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

(a)   any loss of revenue, profit, loss of goodwill, loss of data loss of business contracts or any indirect or consequential loss arising under or in connection with the Contract;

(b)   any mistake or missing information in the Register;

(c)   any loss of registration or use, or both (for whatever reason and whether temporary or otherwise), of the Product; and

9.2.2   Computer-eyez's total liability to the Customer in respect of all other losses arising under or in connection with the Product, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lesser of the Product Fee or £5,000.

9.3   The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.4   This clause 9 shall survive termination of the Contract.

10.   Termination

10.1   Without limiting its other rights or remedies and in accordance with clause 7.6 Computer-eyez may suspend or terminate the Contract immediately where the Customer fails to pay the Product Fee within the Payment Period.

10.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

    10.2.1 the other party commits a material breach of its obligations under this Contract (or any agreement or policy referred to herein) and (if such breach is remediable which shall be decided at Computer-eyez's sole discretion) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

    10.2.2 the other party, where a legal entity, enters into liquidation, is voluntarily wound up or no longer exists; or

    10.2.3 the other party, if a natural person, dies;

    10.2.4 the other party's financial position deteriorates to such an extent that its capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.3 Computer-eyez may at any point (but does not have to in relation to clauses 10.3.1- 10.3.4) transfer (at a fixed fee of £25 payable by the Customer) , cancel, alter, suspend or amend the Product or prevent its renewal through Computer-eyez:

    10.3.1 on the Customer's instructions, where the Customer submits a request to help@computer-eyez.com;

    10.3.2 if Computer-eyez reasonably believes that changes are required to update the Register or to correct any error, ambiguity or inaccuracy relating to the Product's registration are required;

    10.3.3 if the Customer withdraws its permission for Computer-eyez to use its Personal Data in accordance with clause 8;

    10.3.4 if requested to do so by an expert in accordance with a decision made in following the DRS Policy and Procedure;

    10.3.5 on Nominet's instructions;

    10.3.6 If requested to do so by a valid court order.

10.4 Subject to compliance with these terms and the terms referred to in clause 2.3, and the production of necessary information required by Computer-eyez, where the Customer is an individual, and the Customer dies, Computer-eyez will transfer the benefit of this Contract to a third party in accordance to with the deceased Customer's estate at no additional cost.

10.5 In the event that the Customer terminates the Contract in accordance with clause 10.2, Computer-eyez will transfer the use of the Product as directed at no additional cost.

10.6 On termination of the Contract:

10.6.1   For reasons set out in clause 10.1 or 10.3, the Customer shall immediately pay to Computer-eyez all of Computer-eyez's outstanding unpaid invoices and interest;

10.6.2   the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

10.6.3   clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11.   Force majeure

11.1   For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Computer-eyez including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Computer-eyez or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

11.2   Computer-eyez shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.3   If the Force Majeure Event prevents Computer-eyez from providing the Service Product for more than 2 weeks, Computer-eyez shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11.4   Where the Contract has been terminated due to a Force Majeure Event, Computer-eyez shall be entitled to outstanding unpaid invoices and interest and, in respect of the Product.

12.   Disputes

12.1   Where there is a dispute or claim in relation to or arising from the Product or the use of the Product, the Customer agrees that to be bound by the DRS policy and Procedure.

12.2   In all other events where a dispute or claim arises including non-contractual disputes or claims, shall be governed by and construed in accordance with the law of England and Wales.

12.3   Subject to clause 12.1, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation including non-contractual disputes or claims.

13. General

13.1 Assignment and other dealings.

13.1.1 Computer-eyez may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

13.1.2 The Customer shall not, without the prior written consent of Computer-eyez (and where it ensures that any proposed assignee will adhere to these Conditions), assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

13.2 Notices.

13.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

13.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address provided, if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one Business Day after transmission.

13.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 Severance.

13.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

13.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by both parties.

13.8 **Governing law.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims shall be governed by and construed in accordance with the law of England and Wales.

13.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation including non-contractual disputes or claims.