



## Endis Limited Standard Terms of Service

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In these Terms of Service the following words and phrases shall have the following meaning;
- 1.2. The "**Company**" is ENDIS LIMITED, of 182 Histon Road, Cambridge, CB4 3JP, UK. ChurchInsight is a trading name of Endis Limited, a private limited company incorporated in England (Company Number 04072126) and having its registered office at 182 Histon Road, Cambridge, CB4 3JP
- 1.3. The "**Customer Organisation**" is the Church, Charity, Voluntary Organisation, Company or similar organisation, for which the Company supplies the Service,
- 1.4. A "**User**" is a person accessing and interacting with the Service purchased by the Customer Organisation and the Customer Organisation's Content.
- 1.5. "**Service**" is the service provided by the Company to the Customer Organisation, as described in (but not limited by) clause 2.
- 1.6. The "**Service Agreement**" is the agreement between the Company and the Customer Organisation that the Service will be provided in return for the Subscription Fee.
- 1.7. "**System**" is the software developed and provided by the Company in order to provide the Service to the Customer Organisation.
- 1.8. "**Content**" is all material (including but without limitation any data, text, non-System files, graphics, links, music, photographs, audio, video, messages, user records) that is placed on the System.
- 1.9. "**Customer Organisation's Content**" is all Content that is placed on the System by Users or representatives of the Customer Organisation.
- 1.10. "**Subscription Fee**" is the periodic fee set by the Company, payable by the Customer Organisation to the Company, for which the Customer Organisation will receive the ongoing Services.
- 1.11. "**Law**" means the general laws of England and Wales from time to time including (without prejudice to generality of the foregoing) the criminal law, the laws relating to intellectual property and all laws, rules and regulations relating to or touching upon the publication or transmission of material or data in electronic form.
- 1.12. "**Terms**" means the Endis Limited Standard Terms of Service
- 1.13. "**Service Level Agreement**" refers to the ChurchInsight Standard Service Level Agreement currently in effect, unless explicitly superseded by written agreement between the Customer Organisation and the Company.
- 1.14. The Service Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales and the parties submit to the jurisdiction of the Courts of England and Wales. In the event that this agreement is translated into any other language, the English language version shall prevail.
- 1.15. If any of the provisions or clauses or sub-clauses of this agreement is held not to be valid but would be valid if parts of the wording were deleted or modified, then that term shall apply with such deletion or modification as may be necessary to make it enforceable.
- 1.16. If any part of the Service Agreement or the application thereof to any person shall for any reason be adjudged by a court of competent jurisdiction to be invalid such judgment shall not affect the remainder of this agreement which shall continue in full force and effect.
- 1.17. Expressions in the singular include the plural and the masculine include the feminine and vice versa.
- 1.18. Clause headings do not form part of these Terms and shall not affect the interpretation thereof.
- 1.19. The Company may amend the Terms from time to time at its sole discretion provided that it shall give thirty (30) days written notice (see clause 12) of any such change to the Customer Organisation.

### 2. SERVICE DESCRIPTION

- 2.1. The System is a collection of software and databases that provides a dynamically generated web site – designed for use by the Customer Organisation and the Customer Organisation's members, administrators and Users.

- 2.2. The Company will be responsible for providing hosting for the System, ensuring adequate connectivity, availability and reliability for the system, as defined by the Service Level Agreement.
- 2.3. The Company will provide the following ancillary services to the Customer Organisation to support its use of the System:
  - 2.4. domain name management
  - 2.5. email management
  - 2.6. regular backups of the System and Content
  - 2.7. physical and software security for Content
  - 2.8. provision, licensing and maintenance of any third-party software that is used in providing the Service
  - 2.9. technical support to the Customer Organisation by email, phone or other media, as decided by the Company at its sole discretion.
  - 2.10. The Company may make available to the Customer further functionality of the System and further ancillary services.
  - 2.11. The Company may provide upgrades to the System from time to time during the development of the System.
  - 2.12. The System supports a Microsoft® operating environment. The Company does not guarantee operation of all functionality of the System if a User uses computer hardware or software providing an alternative operating platform to access the System.
  - 2.13. The Customer Organisation will pay a Subscription Fee to the Company to make use of the Service; however the provision of certain additional features and services may be subject to additional terms and charges to be agreed separately.

### 3. OWNERSHIP

- 3.1. The Customer Organisation acknowledges that the **System is the sole ownership of the Company** and the Company acknowledges that the **Customer Organisation's Content is the sole ownership of the Customer Organisation**.
- 3.2. The Customer Organisation is not granted a license to use the System outside of the Service, and **use of the Service does not constitute a sale** of the original System or of any eventual copy thereof.
- 3.3. The Company reserves the right to copy the Customer Organisation's Content for maintenance, internal development and backup purposes.
- 3.4. The Customer Organisation is free to make copies of the Customer Organisation's Content (using the download facilities provided by the System) at any time for their own use.
- 3.5. In addition the Customer Organisation may request extracts (in appropriate open formats) of the Customer Organisation's content at any time, subject to the Company's reasonable administration charge, such charge to be decided by the Company.

### 4. USE of SERVICE

- 4.1. The Company grants the Customer Organisation unlimited use of the Service by an unlimited number of its members.
- 4.2. The Customer Organisation is not allowed to use the System for any purpose or on behalf of any other organisation that is not directly and demonstrably part of the Customer Organisation. In addition the Customer Organisation is not authorised to give other organisations access to any restricted portion of the System without the prior consent of the Company.
- 4.3. The Customer Organisation may not rent, time share, lease, sub-license, loan, copy, duplicate, modify, adapt, merge, translate, reverse-engineer, de-compile, disassemble or create derivative works based in whole or in part on any of the Company's software, documentation, equipment or the System or Services of the Company.

### 5. USE of eCOMMERCE FACILITIES

- 5.1. If the Customer Organisation makes use of Ecommerce Facilities provided as part of the Service to sell products and services to Users and visitors, the terms in Clause 5 will apply:
- 5.2. The Customer Organisation is responsible for complying with appropriate legislation relating to its trading activities, including but not limited to applicable tax legislation, consumer protection (distance selling) regulations and trading standards law. The Customer Organisation accepts sole responsibility for its actions whilst using the Ecommerce Facilities.

- 5.3. The Company does not review the catalogue of items offered for sale by the Customer Organisation. The Company never possesses the items offered through the Service and The Company is not involved in transactions between The Customer Organisation and its customers. As a result The Company has no control nor liability concerning the quality, safety or legality of the items listed in the Customer Organisation's own catalogue; the truth or accuracy of this catalogue; the ability of The Customer Organisation to sell these items or the ability of their customers to pay for them. The Company is not responsible for ensuring that The Customer Organisation actually completes a transaction with its customers.
- 5.4. The Service includes software interfaces to third party payment processors. The selection of these payment processors does not constitute a recommendation of these services by The Company, and The Customer Organisation is responsible for establishing and maintaining an agreement with their chosen payment processor independent of The Company.

## **6. CONFIDENTIALITY**

- 6.1. The Company recognises that some Content stored by the Customer Organisation on the System may be confidential in nature. This includes personal information about the Customer Organisation's members, collected and stored in accordance with applicable Data Protection and Copyright laws.
- 6.2. The Company agrees that, except as directed by the Customer Organisation, it will not at any time during or after the provision of the Service disclose any confidential information to any person whatsoever and that upon the termination of the provision of the Service it will turn over to the Customer Organisation all data, files, documents, papers, and other matter in its possession or control that relate to said confidential information.

## **7. INTELLECTUAL PROPERTY and DATA PROTECTION**

- 7.1. Users of the Service are required to agree to a Terms of Use statement (available online as part of the Service) that includes statements 6.2 and 6.3. The Customer Organisation shall be responsible for ensuring that no Users use the Service in breach of those Terms of Use.
- 7.2. All Content, whether publicly or privately posted, is the sole responsibility of the person from whom such Content originated. Accordingly, the User of the Service, not the Company nor the Customer, is entirely responsible and liable for all activities conducted through the Service.
- 7.3. The Company does not control the Content posted or transmitted in any way via the System and, as such, does not guarantee the accuracy, integrity or quality of such Content. Under no circumstances will the Company be liable in any way for any Content, including but not limited to any errors or omissions in any Content, any breaches of Copyright or similar intellectual property ruling, or for any loss or consequential damage of any kind incurred as a result of the use of any Content accessed through the Service.
- 7.4. The Company and the Customer Organisation shall take all necessary steps to ensure their own compliance with the Data Protection Act 1998 and any subsequent legislation which modifies or supersedes the said Act together with all other applicable laws relating to privacy and confidential information.

## **8. SERVICE LEVEL AGREEMENT**

- 8.1. The Service Level Agreement describes the level of accessibility, availability and quality of Service provided by the Company to the Customer Organisation. The Company may make changes to the Service Level Agreement by giving the Customer Organisation thirty (30) days written notice (see clause 12) of the said changes. After this period or the effective date of the new version of the Service Level Agreement (whichever is later) the new version of the Service Level Agreement will take effect.
- 8.2. The Customer Organisation agrees that use of the Services is at its sole risk. The Company, its agents, contractors, licensors, employees and information providers involved in providing the Services do not guarantee that these Services will be uninterrupted or free from error. The Customer Organisation accepts that without notice for commercial, technical (see below) or other reasons:
- 8.3. The Service or part thereof may be suspended.
- 8.4. A network or service provider connected to the Service may suspend or terminate its connection to the Service.
- 8.5. The Service may suspend or terminate its connection with another network or service provider, and that any such suspension or termination shall not be in breach of these Terms. The Services are therefore provided on an "as is" basis without guarantee of any kind.

- 8.6. The Company may from time to time close down the whole or part of the Service for routine repair or maintenance work. The Company shall give as much notice as in the circumstances is reasonable and shall endeavour to carry out such works during the scheduled maintenance periods as published by the Company as appropriate.
- 8.7. The Company may from time to time without notice close down or restrict the whole or part of the Service where necessary for emergency repair, or to preserve the accessibility, security or integrity of the Service for all customers of the Company utilizing any shared aspect of the System. The Company shall at its sole discretion decide when such action is necessary.
- 8.8. Except under the provisions of 7.5, the Company will take all possible measures to provide equitable and equivalent service to all customers.

## **9. CHARGES**

- 9.1. The Subscription Fee and details of any other charges payable by the Customer Organisation to the Company will be agreed in writing (by post, e-mail or fax).
- 9.2. The Subscription Fee will be payable in advance of the period of Service provision, for a minimum period of one calendar month.
- 9.3. The Company may change the Subscription Fee (or any other charges payable by the Customer Organisation to the Company) by giving the Customer Organisation thirty (30) days written notice (see clause 12) of the said changes.

## **10. LIABILITY**

- 10.1. The Customer Organisation agrees and acknowledges that it is in a better position to foresee and evaluate any potential damage or loss it may suffer in connection with the Services provided to the Customer Organisation under the Service Agreement; that the Company cannot adequately insure its liability to the Customer Organisation; and that the charges payable under this agreement have been calculated on the basis that the Company shall exclude liability as set out in this condition.
- 10.2. These Terms contain express warranties, undertakings and obligations of the Company and any other condition or warranty which might be implied or incorporated within these Terms, by reason of statute or common law or otherwise, is hereby expressly excluded so far as may be permitted by law.
- 10.3. While the Company and its employees will use all reasonable endeavours to provide a prompt continuing Service, it will not be liable for any loss of data resulting from *inter alia* delays, non-delivery, missed deliveries or Service interruptions caused by events beyond the control of the Company or by any errors or omissions of the Customer Organisation.
- 10.4. In no circumstances whatsoever will the Company be liable to the Customer Organisation in contract, tort, and negligence or otherwise for indirect, incidental, special or consequential damages or any loss of business, contracts, profits or anticipated savings arising out of the use of the Service or inability to use the Service or out of any breach of any warranty.
- 10.5. The operability of the User's computer, internal network and access to the Internet remains the responsibility of the User; any interruptions of access to the Services that occur due to the failure or configuration of these devices may not be deemed as an interruption or suspension of the formal provision of the Service.
- 10.6. The Company shall not be liable for failure of the Service by circumstances beyond the Company's control. This includes, but is not limited to; acts of God, fire, lightning, explosion, war (whether declared or otherwise), disorder, flood, industrial disputes, sabotage, extremely severe weather or acts of local or central Government or other competent authorities.

## **11. INDEMNITY**

- 11.1. The Customer Organisation is responsible for ensuring that the Service is used in accordance with these Terms, and the Company reserves the right to terminate its provision of the Service with immediate effect if these Terms are breached by the Customer Organisation.
- 11.2. The Customer Organisation hereby agrees to indemnify the Company, its agents, contractors, licensors, employees and information providers providing services from any loss suffered by the Company as a result of a breach of the terms and conditions of the Service Agreement by the Customer Organisation and from any claim brought by third parties alleging that use of the Service by the Customer Organisation or under its account has infringed any intellectual property or other right of any kind, or any applicable UK or international legislation or regulation. The Customer Organisation shall pay all costs, damages, awards, fees (including legal fees) and judgments awarded against the Company arising from such claims, and shall provide the Company with notice

of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claims, at the Customer Organisation's sole expense.

## **12. TERMINATION**

- 12.1. The Service Agreement may be terminated at any time, for any reason, by either party, with thirty (30) days prior written notice (see clause 12) to the other party.
- 12.2. Prior to termination of the Service Agreement the Customer Organisation is responsible for making copies of their content, as detailed in clause 3.
- 12.3. Upon termination of the Service Agreement, the Company will suspend the Service, remove the Customer Organisation's Content from their system in accordance with clause 5, and the Customer Organisation shall be free to transfer management of their domain names and email to a third party.
- 12.4. Upon termination the Company will make available to the Customer Organisation an application that is able to operate directly on the data extracted from the system (as per clause 3.5). The purpose of this application is to provide continued access to the data that is determined to be important to the organisational effectiveness of the Customer Organisation, in a means technically independent of the Company. The purpose of this application is not to replace the full functionality of the Service provided by the Company. The platform, functional specification and price of this application are specified as per the Data Continuity Application Specification, available from the Company.

## **13. NOTICE**

- 13.1. Notice periods shall run from:
- 13.2. where made by post; the second day after posting
- 13.3. where made by e-mail; 24 hours after sending, if no delivery status failure notifications are received by the Company.
- 13.4. where made by fax; on receipt of a successful transmission report by the Company.
- 13.5. Such notice shall be deemed to be effective where sent to the Customer Organisation's last known contact details (postal address, fax number or e-mail address as is relevant).

## **14. WAIVER**

Failure by the Company to exercise any of its rights thereunder shall not amount to a waiver of any such right, or operate so as to bar the exercise of enforcement at any time or times thereafter.