



**SALES AND SERVICES**

**1. DEFINITIONS**

“**Agreement**” means the agreement between TWISTED SPIRE DIGITAL MEDIA LTD and the Customer for the supply of Products and/or Services in accordance with these Conditions. “**TWISTED SPIRE**” means Twisted Spire Digital Media Ltd.

“**Conditions**” means these terms and conditions as amended from time to time.

“**Customer**” means the legal entity accepting TWISTED SPIRE DIGITAL MEDIA LTD’s written or oral quotation for the supply of Products or Services or whose order for Products or Services is accepted by TWISTED SPIRE DIGITAL MEDIA LTD or the party otherwise commissioning the Services in each case as named on the Invoice. “**Maintained Products**” means hardware, software or peripheral products in respect of which Services are either bundled with the Products or required under a Service Offering selected and ordered by the Customer, accepted by TWISTED SPIRE DIGITAL MEDIA LTD and specified on the Invoice, and such additions or changes thereto as may from time to time be agreed in writing between the parties. It does not include data back-ups or recovery, which are the sole responsibility of the Customer unless the data backup and recovery service provided from Bluemotion IT and/or third-party supplier guarantees it. “**Data**” means the numbers, text, characters, images, sounds or other information other than software programs input into the Customer’s computer and stored and/or processed there.

“**Service Offering(s)**” means the service options offered by TWISTED SPIRE DIGITAL MEDIA LTD for Maintained Products, as published in TWISTED SPIRE DIGITAL MEDIA LTD’s literature. “**Services**” means the services to be performed by TWISTED SPIRE DIGITAL MEDIA LTD pursuant to the Service Offering selected by the Customer.

“**Price**” means the charge for the Products or Services as specified in the Order or in any subsequent agreed variation of the Order. “**Products**” means goods sold by TWISTED SPIRE DIGITAL MEDIA LTD pursuant to the Agreement as specified on the Invoice. “**Order**” the Customer’s order for the supply of Products and/or Services as set out in the Customer’s written

acceptance of TWISTED SPIRE DIGITAL MEDIA LTD’s quotation.

“**Third Party Products**” means Products not manufactured or assembled or authored by TWISTED SPIRE DIGITAL MEDIA LTD and supplied to TWISTED SPIRE DIGITAL MEDIA LTD by third parties for re-supply by TWISTED SPIRE DIGITAL MEDIA LTD.

“**Business Day**” means a day other than Saturday, Sunday or a public holiday in England when bars in London are open.

**2. BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when TWISTED SPIRE DIGITAL MEDIA LTD issues written acceptance of the Order at which point and on which date the Agreement shall come into existence.
- 2.3 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied upon any statement, promise, representation, assurance or warranty made or given on behalf of TWISTED SPIRE DIGITAL MEDIA LTD which is not set out in the Agreement.
- 2.4 These Conditions apply to the Agreement 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.
- 2.5 Any quotation given by TWISTED SPIRE DIGITAL MEDIA LTD shall not constitute an offer and is only valid for a period of 5 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

**3. DELIVERY, TITLE AND RISK**

- 3.1 The Products are delivered at TWISTED SPIRE DIGITAL MEDIA LTD’s manufacturing facility or other agreed delivery point.
- 3.2 Manufacturing requirements may cause products to be delivered by instalments. Delivery dates are approximate and time shall not be of the essence for delivery.

3.3 Risk passes on delivery, Title to Products passes to Customer when full payment is made:

- 3.4 Until title to the Products has passed to the Customer, the Customer shall:
  - (i) store the Products separately from all other Products held by the Customer so that they remain readily identifiable as TWISTED SPIRE DIGITAL MEDIA LTD’s property;
  - (ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - (iii) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on TWISTED SPIRE DIGITAL MEDIA LTD’s behalf from the date of delivery;
  - (iv) notify TWISTED SPIRE DIGITAL MEDIA LTD immediately if it becomes subject to any of the events listed in clause 16.1(ii), and
  - (v) give TWISTED SPIRE DIGITAL MEDIA LTD such information relating to the Products as the Supplier may require from time to time.

3.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 16.1(ii) then, without limiting any other right or remedy TWISTED SPIRE DIGITAL MEDIA LTD may have:

- (i) the Customer’s right to resell Products or use them in the ordinary course of its business ceases immediately; and (ii) TWISTED SPIRE DIGITAL MEDIA LTD may at any time: (a) require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

**4. ACCEPTANCE OF PRODUCTS**

Unless Customer shall, promptly after delivery, inspect the Products and notify TWISTED SPIRE DIGITAL MEDIA LTD, in writing, of any defects found, the Products shall be deemed to have been accepted on delivery

**5. THE SERVICE OFFERINGS**

5.1 Services are provided in accordance with the provisions contained in the Service



Offering selected by the Customer as shown on the Invoice.

- 5.2 TWISTED SPIRE DIGITAL MEDIA LTD will use reasonable endeavours to meet relevant response times.
- 5.3 The Customer agrees that TWISTED SPIRE DIGITAL MEDIA LTD shall not be liable for any direct, indirect or consequential losses occurring as a result of TWISTED SPIRE DIGITAL MEDIA LTD's failure to meet relevant response times except as set out in Clause 11.
- 5.4 The Customer may purchase extended service coverage in accordance with the current TWISTED SPIRE DIGITAL MEDIA LTD policy.
- 5.5 TWISTED SPIRE DIGITAL MEDIA LTD warrants to the Customer that the Services will be provided using reasonable care and skill.

#### 6. SOFTWARE LICENCE

All software is sold subject to the software publisher's end user licence agreement (EULA) and/or third-party licence (available upon request), the terms of which the Customer agrees to adhere to.

#### 7. EXCEPTIONS

- 7.1 TWISTED SPIRE DIGITAL MEDIA LTD shall be under no obligation to supply the Services where, in TWISTED SPIRE DIGITAL MEDIA LTD's reasonable opinion, such Services are required due to previous improper or inadequate installation by the Customer or a third party provider, use or maintenance: actions or modifications by unauthorised third parties or the Customer; or accidental or wilful damage.
- 7.2 The Services do not include the correction or avoidance of software defects or errors or the loading or reloading of Customer's applications software or data or any reconfiguration of the Maintained Products beyond reloading the operating system software as carried out before shipment.
- 7.3 TWISTED SPIRE DIGITAL MEDIA LTD cannot accept any responsibility for loss of or damage to the Customer's data however caused.
- 7.4 Any material that, in our judgment, is obscene, threatening, illegal, or violates

our terms of service in any manner may be removed from our servers (or otherwise disabled), with or without notice.

- 7.5 The Customer is responsible to ensure that scripts/programs installed as part of their websites are secure and permissions of directories are set properly, regardless of installation method.
- 7.6 TWISTED SPIRE DIGITAL MEDIA LTD reserves the right to require changes or disable as necessary any web site, account, database, or other component that does not comply with its established policies, or to make any such modifications in an emergency at its sole discretion.

#### 8. REPLACEMENT

TWISTED SPIRE DIGITAL MEDIA LTD reserves the right to replace the whole or any part of the Maintained Products. Repairs may be carried out using reconditioned parts or products which, whilst not necessarily identical to the faulty Maintained Products, are equivalent too new in functionality and appearance.

#### 9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall properly use the Maintained Products and shall provide TWISTED SPIRE DIGITAL MEDIA LTD with all reasonable facilities and information to enable TWISTED SPIRE DIGITAL MEDIA LTD to perform its duties.
- 9.2 The Customer shall be responsible for ensuring the security and integrity of their data by maintaining adequate backup and storage procedures.
- 9.3 The Customer shall be responsible for complying with all Customer applicable regulatory requirements.
- 9.4 Information and/or data provided to Twisted Spire Digital Media Ltd by the customer for use on any of the products and services provided is not checked or proofread by Twisted Spire Digital Media Ltd. We will assume that data / information provided by the customer is suitable and legal. We will assume the customer and/or supplier on behalf of the customer has the legal right to use it and is not in infringement of any

copyright laws or licencing conditions by allowing and authorising Bluemotion IT to use the data and or information provided. Twisted Spire Digital Media Ltd will not accept any liability for losses relating to use of data supplied to us that is in infringement of any law or conditions of use. Supply can be either directly or automatic. Any system/software that auto-updates or feeds into products shall be subject to this section. An example of this is a facility is one that allows your social channels to feed data onto another product such as a website. Conditions apply to this data unless specified otherwise within a particular purchase order.

#### 10. PRICE AND PAYMENT

- 10.1 Full payment in lieu to any deposits paid shall be-made in full immediately on or before supply of Products or Services or, if agreed at the time of order, as stated within the payment terms of the Invoice.
- 10.2 The Price of the Products and/or Services shall be TWISTED SPIRE DIGITAL MEDIA LTD's quoted price current at the date of the Customer's order and in any case as shown on the Invoice.
- 10.3 All Prices quoted in writing are valid for 30 days except written quotations in respect of Third Party Products which are valid for 10 days only. Oral quotations are valid only to the end of the business day upon which they are given.
- 10.4 All Prices for the sale of Products exclude TWISTED SPIRE DIGITAL MEDIA LTD's charges for transport and insurance.
- 10.5 The Price and any additional charges payable under the Agreement are exclusive of all sales taxes including Value Added Tax.
- 10.6 Time for payment is of the essence. If the Customer fails to make any payment due to TWISTED SPIRE DIGITAL MEDIA LTD under the Agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc base rate from time to time. Such interest shall accrue pm a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.



10.7 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. TWISTED SPIRE DIGITAL MEDIA LTD may, without limiting its other rights to remedies, set-off any amount owing to it by the Customer against any amount payable by the Customer to TWISTED SPIRE DIGITAL MEDIA LTD.

10.8 **Payment Terms.** If you purchase a Service, then these payment terms apply to your purchase and you agree to them.

a. **Charges.** If there is a charge associated with a portion of the Services, you agree to pay that charge. The price stated for the Services includes all applicable taxes, unless stated otherwise. You are solely responsible for paying such taxes or other charges. Taxes are calculated based on your location at the time your account was registered, unless stated otherwise. **After we have given you notice that we did not receive an on-time, full payment from you, we may suspend or cancel the Services if you do not immediately make the full payment.** Suspension or cancellation of the Services for non-payment could result in a loss of access to and use of your account and its content. Connecting to the Internet via a corporate or other private network which masks your location may cause charges to be different from those displayed for your actual location. Depending on your location, some transactions might require foreign currency conversion or be processed in another country. Your bank might charge you additional fees for those services when you use a debit or credit card. Please contact your bank for details.

b. **Your Billing Account.** To pay the charges for a Service, you will be asked to provide a payment method at the time you sign up for that Service. You can access and change your billing information and payment method by contacting Bluemotion IT directly via telephone or website. Additionally, you agree to permit

Twisted Spire Digital Media Ltd to use any updated account information regarding your selected payment method provided by your issuing bank or the applicable payment network. You agree to promptly update your account and other information, including your email address and payment method details, so we can complete your transactions and contact you as needed in connection with your transactions. If you tell us to stop using your payment method and don't provide us with another payment method after our notice to you to do so within an appropriate timeframe, we may suspend or cancel your paid Service for good cause. Changes made to your billing account won't affect charges we submit to your billing account before we could reasonably act on your changes to your billing account.

c. **Billing.** By providing Twisted Spire Digital Media Ltd with a payment method, you (i) represent that you are authorised to use the payment method that you provided and that any payment information and billing address you provide is true and accurate; (ii) authorise Twisted Spire Digital Media Ltd to charge you for the Services or available content using your payment method and (iii) authorise Twisted Spire Digital Media Ltd to charge you for any paid feature of the Services that you choose to sign up for or use while these Terms are in force. As specified, we may bill you (a) in advance; (b) at the time of purchase; (c) shortly after purchase or (d) on a recurring basis for subscription Services. Also, we may charge you up to the amount you have approved, and we will notify you in advance of any change in the amount to be charged for recurring subscription Services and, in the case of a price change, provide you with the opportunity to cancel the Services before the price changes. We may bill you at the same time for more than one of your prior billing periods for amounts that haven't previously been processed.

d. **Recurring Payments.** When you purchase the Services on a subscription basis (e.g. monthly, every 3 months or annually (as applicable)), you acknowledge and agree that you are authorising recurring payment and

payments shall be made to Twisted Spire Digital Media Ltd by the method you have chosen at the recurring intervals you have agreed to, until the subscription for that Service is terminated by you or by Twisted Spire Digital Media Ltd. By authorising recurring payments, you are authorising Microsoft to process such payments as either electronic debits or fund transfers, or as electronic drafts from your designated account (in the case of Automated Clearing House or similar payments), or as charges to your designated account (in the case of credit card or similar payments) (collectively, "**Electronic Payments**"). Subscription fees are generally billed or charged in advance of the applicable subscription period. If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, Twisted Spire Digital Media Ltd or its service providers reserve the right to collect any applicable return item, rejection or insufficient funds fee and to process any such payment as an Electronic Payment.

e. **Automatic Renewal.** You may choose for Services to automatically renew at the end of a fixed service period. We will remind you by email before any Services renew for a new term and notify you of any price changes. Once we have reminded you that you elected to automatically renew the Services, we may automatically renew your Services at the end of the current service period and charge you the then current price for the renewal term, unless you have chosen to cancel the Services as described below. We will also remind you that we will bill your chosen payment method for the Services renewal, whether it was on file on the renewal date or provided later. We will also provide you with instructions on how you may cancel the Services. You must cancel the Services before the renewal date to avoid being billed for the renewal.

g. **Terminating the Services.** You should refer back to the offer describing the Services as (i) you may not receive a refund at the time of cancellation; (ii) you may be obligated to pay cancellation charges; (iii) you may be obligated





to pay all charges made to your billing account for the Services before the date of cancellation or (iv) you may lose access to and use of your account when you cancel the Services. If you cancel, your Services end at the end of your current Service period or, if we bill your account on a periodic basis, at the end of the period in which you cancelled.

**h. Price Changes.** If there is a fixed term and price for your Service offer, that price will remain in force for the term. You will need to agree to any new offer and price if you want to continue the Services. If your Services are on a periodic basis (for example, monthly), with no specific time length, and isn't a trial offer, we may change the price of the Services up to 5 per cent per year if we inform you at least 30 days before the change will become effective. You will have the opportunity to cancel the Services before the price changes. When we notify you of the price change, we'll also inform you that the new price will become effective if you don't cancel the Services.

**i. Payments to You.** If we owe you a payment, then you agree to timely and accurately provide us with any information we need to get that payment to you. You are responsible for any taxes and charges you may incur as a result of this payment to you. You must also comply with any other conditions we place on your right to any payment. **If you receive a payment in error, we may reverse or require return of the payment. You agree to cooperate with us in our efforts to do this. We may also reduce the payment to you without notice to adjust it for any previous overpayment.**

**j. Late payments.** In case of late payments, you must pay for the reasonable costs we incur to collect any past due amounts including attorneys' fees and other legal fees and costs, as permitted by law and regulations. We may suspend or cancel your Services if you fail to pay in full on time after we send you a reminder – with the threat of suspension and/or cancellation of the Services – to make your payment within an appropriate time. You can avoid suspension or cancellation if you make the required payment within the appropriate

time set forth in the reminder. A different procedure will apply if the amount missing is marginal. Amounts missing below 2 per cent of the total invoice value will always be deemed marginal. Suspension or cancellation of the Services for non-payment could result in the loss of access to your account.

10.9 Changes, alterations or updates to any of your products supplied will be chargeable unless otherwise stated in writing by Twisted Spire Digital Media Ltd. Twisted Spire Digital Media Ltd design and run your services based on current law and practices in accordance with legislation and statistics. It may be necessary from time to time to adapt, change or alter your products to keep up with any changed, allowing Twisted Spire Digital Media Ltd to stay within the law. We reserve the right to charge for updating any products to do this. Twisted Spire Digital Media Ltd reserves the right to pass on any increase of costs or monthly subscriptions from third party suppliers to customer. Twisted Spire Digital Media Ltd reserve the right to increase our prices to the customer for any products or services supplied at any time without due reason with 30 days' notice to the customer.

## 11. WARRANTY

11.1 TWISTED SPIRE DIGITAL MEDIA LTD manufactures its hardware Products from parts and components that are new or equivalent to new in accordance with industry standard practices and TWISTED SPIRE DIGITAL MEDIA LTD warrants that the Products (excluding Third Party Products and software) will be free from defects in materials, workmanship and design for a period of 12 months from the date of purchase and that spare parts used in repairing Maintained Products under any Service Offering will be free from defects in materials, workmanship and design for a period of 90 days from installation in the Maintained Products or the remainder of the Warranty Period or Service Offering appropriate to or purchased by the Customer in respect of the Maintained Products, whichever is the longer.

11.2 In respect of Third Party Products, the Customer shall only be entitled to the

benefit of any warranty or guarantee given by the Third-Party manufacturer.

11.3 If, before the expiry of the warranty period or appropriate Service Offering TWISTED SPIRE DIGITAL MEDIA LTD receives written notice from the Customer of any breach of the warranty then TWISTED SPIRE DIGITAL MEDIA LTD shall, within a reasonable time, repair, or, at its option replace Products or spare parts that are defective or otherwise remedy such defects.

11.4 This warranty does not apply to defects resulting from improper or inadequate installation, use or maintenance; actions or modifications by unauthorised third parties or the Customer or accidental or wilful damage.

11.5 TWISTED SPIRE DIGITAL MEDIA LTD does not give any warranty that the Products are fit for any particular purpose and this warranty is given in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade, usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

## 12. LIABILITY

12.1 TWISTED SPIRE DIGITAL MEDIA LTD shall not be liable for any loss or damage sustained or incurred by the Customer or any third party (including without limitation any loss of use of the Maintained Products or loss of or spoiling of any of the Customer's programs or data) resulting from any breakdown of or fault in the Maintained Products, unless such breakdown or fault is caused by the negligence or wilful misconduct of TWISTED SPIRE DIGITAL MEDIA LTD, its employees, agents or sub-contractors or to the extent that such loss or damage arises from any negligent delay by TWISTED SPIRE DIGITAL MEDIA LTD in providing the relevant Services and then only to the extent not excluded by the Agreement.

12.2 TWISTED SPIRE DIGITAL MEDIA LTD shall indemnify the Customer and keep the Customer fully and effectively indemnified against any loss of or damage to any property or injury to or



death of any person caused by any negligent act or omission or wilful misconduct of TWISTED SPIRE DIGITAL MEDIA LTD, its employees, agents or sub-contractors, or by any breach of its contractual obligations.

12.3 The Customer shall indemnify TWISTED SPIRE DIGITAL MEDIA LTD and keep TWISTED SPIRE DIGITAL MEDIA LTD fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the customer, its employees, agents or subcontractors or by any breach of its contractual obligations.

12.4 Except in respect of injury to or death of any person, for which no limit applies, the respective liability of TWISTED SPIRE DIGITAL MEDIA LTD and the Customer under sub-clauses 11.1, 11.2, and 11.3 in respect of each event or series of connected events shall not exceed £ 250.00 or the Price, whichever is the greater.

12.5 Notwithstanding anything else contained in the Agreement, TWISTED SPIRE DIGITAL MEDIA LTD shall not be liable to the Customer for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

**13. FORCE MAJEURE**

Neither party shall be liable for any delay in performance caused by circumstances beyond its reasonable control and the party in delay shall be entitled to a reasonable extension of time for performance.

**14. INTELLECTUAL PROPERTY RIGHTS**

14.1 Each party will indemnify the other against all costs, claims, demands, expenses, and liabilities arising out of or in connection with any claim that the normal use or possession of the Products or Third Party Products or products supplied by the Customer for integration purposes (whether used separately or in combination) infringes the intellectual property rights (including without limitation any patent,

copyright, registered design, design right or trade mark) of any third party.

14.2 Data and information provided by Twisted Spire Digital Media Ltd, whether created or purchased, is done so for the use on your products whilst ever Twisted Spire Digital Media Ltd are engaged in service. Data, images and information cannot be transferred, used, copied, altered or in any way interfered with other than by employees or authorised persons acting on behalf of Twisted Spire Digital Media Ltd.

14.3 Digital services provided such as websites and services are authorised for use by you whilst terms and conditions contained within this document are adhered to. You, or agents/persons acting on your behalf are not authorised unless stated in writing by Twisted Spire Digital Media Ltd to take/use products and or services with you on termination of this agreement.

14.4 Digital content and data held by Twisted Spire Digital Media Ltd belongs to Twisted Spire Digital Media Ltd and cannot be transferred free of charge. Twisted Spire Digital Media Ltd reserves the right to charge a fee for transferring any data/ information to the customer or third party. This includes but not limited to any website data. Transferring to another provider on termination of this agreement will incur a cost which will be payable prior to release of any data or authorisation.

14.5 Any digital data, be it video, images, sound or other format purchased by Twisted Spire Digital Media Ltd may have attached licence conditions from our suppliers. Twisted Spire Digital Media Ltd will use the data in accordance with that licence. Twisted Spire Digital Media Ltd cannot accept any liability for breaches of this licence if it is copied or used without authorisation by Twisted Spire Digital Media Ltd.

**15. CONFIDENTIALITY**

Each party shall treat as it does its own trade secret information; all information obtained from the other pursuant to the Agreement, which is marked "confidential" or the equivalent or has the necessary quality of confidence about it.

**16. TERMINATION**

16.1 The Agreement may be terminated forthwith by written notice from either party if:

(i) the other commits any material breach of any of the terms of the Agreement and, if such breach is remediable fails to do remedy that breach within 30 days after receipt of notice in writing to do so; or

(ii) The other becomes insolvent or bankrupt or is otherwise unable to pay its debts as they fall due.

16.2 Without limiting its other rights or remedies, TWISTED SPIRE DIGITAL MEDIA LTD may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any sums due under the Agreement on the due date for payment.

16.3 Without limiting its other rights or remedies, TWISTED SPIRE DIGITAL MEDIA LTD may suspend the supply of Services or all further deliveries of Products under the Agreement or any other contract between the Customer and TWISTED SPIRE DIGITAL MEDIA LTD if the Customer fails to pay any amount due under the Agreement on the due date for payment, the Customer becomes subject to any of the events listed in clause 16.1(ii), or TWISTED SPIRE DIGITAL MEDIA LTD reasonably believes that the Customer is about to become subject to any of them.

**17. ENTIRE AGREEMENT**

17.1 The Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.

17.2 The Customer warrants to TWISTED SPIRE DIGITAL MEDIA LTD that it has not been induced to enter into the agreement by any prior oral representation (whether innocently or negligently made) except as specifically contained in the Agreement.



**18. CONSUMERS**

The statutory rights of a Customer dealing with TWISTED SPIRE DIGITAL MEDIA LTD as a consumer as defined in the Unfair Contract Terms Act 1977 remain unaffected.

**19. ASSIGNMENT**

TWISTED SPIRE DIGITAL MEDIA LTD may subcontract all or any of its obligations under the Agreement to a competent third party. Except for this, neither party shall assign or otherwise transfer any of its rights or obligations.

**20. NOTICES**

- 20.1 All notices must be in writing and sent to the address of the recipient set out in the Agreement or the recipient's registered office or such other address as the recipient may designate.
- 20.2 Any such notice may be delivered personally or by first class prepaid letter or e-mail and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by telex, e-mail transmission when dispatched.
- 20.3 Any notice concerning the validity or existence of the Agreement must be delivered personally or sent by Recorded Delivery first class letter post or by email.

**21. SEVERANCE**

If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Agreement and the remainder of the provisions in question shall not be affected

**22. LAW AND JURISDICTION**

The Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

**HOSTING**

These terms of business apply to hosting plans and domain name registration services. They do not apply to dedicated server products which are subject to the Dedicated Server Hosting Terms.

Where the context admits: "We" & "Us" includes Twisted Spire Digital Media Ltd of: 91 Bocking Lane, Sheffield S8 7BJ, United Kingdom or any party acting on Twisted Spire Digital Media Ltd.'s implicit instructions. "You" includes the person purchasing the Services or any party acting on the customer's instructions. "The Registrant" includes the person applying for a domain name or any party acting on the Registrant's instructions. "The Registry" the relevant domain names Registry. "Server" means the computer server equipment operated by us in connection with the provision of the Services. "Web Site" means the area on the Server allocated by us to you for use by you as a site on the Internet.

The relationship entered into between you and us is governed by these following terms, which shall apply during, and where necessary after, the period of the commercial relationship between you and us.

**23. Domain Name Registration**

- 23.1. We make no representation that the domain name you wish to register is capable of being registered by or for you or that it will be registered in your name. You should therefore not assume registration of your requested domain name(s) until you have been notified that it has or they have been registered. Any action taken by you before such notification is at your risk.
- 23.2. The registration and use of your domain name is subject to the terms and conditions of use applied by the relevant Registry; you shall ensure that you are aware of those terms and conditions and that you comply with them.
- 23.2.1. By registering a .uk domain name, you enter into a contract of registration with Nominet UK on the terms and conditions published at

www.nominet.org.uk or available on our website  
www.bluemotionit.co.uk/terms

- 23.3. You shall have no right to bring any claim against us in respect of any refusal to register a domain name by the relevant registration authority.
- 23.4. Any administration charge paid by you to us shall be non-refundable notwithstanding refusal by the Registry to register your desired name.
- 23.5. We shall have no liability in respect of the use by you of any domain name; any dispute between you and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, we shall be entitled, at our discretion and without giving any reason, to withhold, suspend or cancel the domain name. We shall also be entitled to make representations to the relevant Registry but will not be obliged to take part in any such dispute.
- 23.6. We shall not release any domain to another provider unless full payment for that domain has been received by us.
- 23.7 Twisted Spire Digital Media Ltd will register the domain name requested by you. We will assume that you have the right to register and use the requested domain name and the contents of it. The responsibility to ensure and to avoid conflict and/or any legal action taken by other parties will be upon you the customer and not Twisted Spire Digital Media Ltd who will accept no blame or responsibility for any action taken. If you are using a domain to reflect your organisation's name, address, contact details or services, it is your responsibility as the customer to ensure that you have the legal right to do so. No liability can fall upon Twisted Spire Digital Media Ltd for damages caused by registering a domain on behalf of one of our customers. Domains are non-refundable once purchased.
- 23.8 Domains are re-registered on the date stated. Upon initial registration of your requested domain you agree to comply with the agreed payment terms as listed in 10.8 above. Twisted Spire Digital Media Ltd will not accept any liability for any loss caused by the customer not being able to use the domain in question.
- 23.9 By hosting your own domain, you must adhere to the terms and conditions set in place by that provider. It is your responsibility to make the required payments and fulfil any





other conditions set in place by the service provider. This is to be the case even if Twisted Spire Digital Media Ltd log in to your account and make authorised adjustments on your behalf. If the services for your own hosted domain fail, are discontinued or for any other reason does not work and it affects services you have with Twisted Spire Digital Media Ltd, this will not affect any of the terms of conditions set in place by Twisted Spire Digital Media Ltd nor negate any payment terms and conditions.

23.10 Your right to transfer a domain, registered by Twisted Spire Digital Media Ltd on your behalf remains unaffected but you agree to be liable for any overdue, additional and/or agreed charges including taxes incurred by Twisted Spire Digital Media Ltd relating to the domain. You will have to pay any charges to third parties for a new registration and any costs for transferring, either charged to you or incurred by Twisted Spire Digital Media Ltd. Twisted Spire Digital Media Ltd reserves the right to charge an administration fee for our time spent arranging or performing any tasks in relation to the transfer.

**24. Web Site Hosting and Email**

- 24.1. We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss or damage to any data stored on the Server.
- 24.2. You represent, undertake and warrant to us that you will use the Web Site allocated to you only for lawful purposes and to promptly inform us if this clause or any sub-clause of this clause has been breached or you become aware that they may have been breached. In particular, you represent, warrant and undertake to us.
  - 24.2.1. you will not use the Server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so.
  - 24.2.2. you will not upload, post, link to or transmit:
    - 24.2.2.1. any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way.

- 24.2.2.2. any material containing a virus or other hostile computer program.
- 24.2.2.3. any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.
- 24.2.2.4. any material which is forbidden by our acceptable use.
- 24.2.3. you will not send bulk email whether opt-in or otherwise from our network. Nor will you promote a site hosted on our network using bulk email. 2.2.4. you will not employ programs which consume excessive system resources, including but not limited to processor cycles and memory.
- 24.2.5. any file you store on the Server will be reachable via a hyperlink from a page on your site.
- 24.3. We reserve the right to remove any material which we deem inappropriate from your Web Site without notice to you.
- 24.4. You shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account or breach of security, including but not limited to loss, theft or unauthorised disclosure of your password or other security information.
- 24.5. You shall observe the procedures which we may from time to time prescribe and shall make no use of the Server which is detrimental to our other customers.
- 24.6. You shall procure that all mail is sent in accordance with applicable legislation (including GDPR and data protection legislation) and in a secure manner.
- 24.7. In the case of an individual User, you warrant that you are at least 18 years of age and if the User is a company, you warrant that the Services will not be used by anyone under the age of 18 years.
- 24.8. Any access to other networks connected to Twisted Spire Digital Media Ltd must comply with the rules appropriate for those other networks.
- 24.9. While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers and we shall be under no liability for non-

receipt or misrouting of email or for any other failure of email.

- 24.10. No more than one log-in session under any one account may be used at any time by you. If you have multiple accounts, you are limited to one login session per system account at any time.
- 24.11 You agree to allow Twisted Spire Digital Media Ltd to create and adapt content on your behalf, we may, depending on the service provided, create information about your organisation in-line with what we believe suites your website or public profile. An example of this is we may create general information not specific to your services. You agree to allow us artistic licence and must inform Twisted Spire Digital Media Ltd should you wish any information changing, removing or adapting. Twisted Spire Digital Media Ltd cannot accept any liability for loss or damages due to any incorrect information.
- 24.12 Some of our products may include a hyperlink within the product advertising our services. We reserve the right to have this on your website and products to allow people viewing the product to locate the creator of the product, namely Twisted Spire Digital Media Ltd.

**25. Service Availability**

- 25.1. We shall use our reasonable endeavours to make available to you at all times the Server and the Services, but we shall not, in any event, be liable for interruptions of Service or down-time of the Server or connectivity.
- 25.2. Should we require to make any maintenance whether planned or for an emergency then we shall not, in any event, be liable for interruptions of services of down-time of the server.

**26. Termination and Refunds**

- 26.1. We shall be entitled to suspend the Services and/or terminate this Agreement forthwith without notice to you if you:
  - a. Fail to pay any sums due to us as they fall due.
  - b. Break any of these terms and conditions.
  - c. Are a company and you go into liquidation or suffer the appointment of an administrator or administrative receiver or enter into a voluntary arrangement with your creditors.



- 26.2. No refunds will be made under any circumstances for Services suspended in accordance with 26.1.
- 26.3. We reserve the right to suspend the services and/or terminate this agreement at any time.
- 26.4. You may cancel the Services at any time.  
To do so you must request cancellation of the Services in writing including your account number. 3 months-notice is required prior to cancellation of your services with us. If you wish to transfer your domain/s prior to this notice period 3 months of your agreed monthly hosting charges will be required to be paid before the domains are transferred.
- 26.5. Domain name registration fees, charges for additional data transfer and charges for optional extras added to your account are not refundable under any circumstances.
- 26.5.1. You will not be entitled to a refund on this basis if you have previously held an account with Twisted Spire Digital Media Ltd.
- 26.6. Where payment has been made by direct debit, any refund will only be issued to the same account.
- 26.7. On termination of this Agreement or suspension of the Services we shall be entitled immediately to stop access to your Web Site and to remove all data located on the Server.

**27. Indemnity**

27.1. You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of Services by us to You and your use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by us in consequences of your breach or non-observance of any of the terms of this Agreement.

**28. Limitation of Liability**

28.1. All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether

imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded to the extent applicable under UK law, subject always to sub clause 29.2.

- 28.2. Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.
- 28.3. Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim.
- 28.4. In any event no claim shall be brought unless you have notified us of the claim within one month of it arising.
- 28.5. In no event shall we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

**29. Non-Waiver**

29.1 Any forbearance or failure by us to enforce a contractual provision to which you are subject shall not affect our right to require such performance at any subsequent time, nor shall the waiver or forbearance by us of any breach of any provisions of the agreement herein be taken to be or held to be a waiver of the provision or provisions itself of themselves.

**30. Law**

30.1. This Agreement shall be governed by and construed in accordance with English law and you hereby submit to the exclusive jurisdiction of the English courts.

**31. Headings**

31.1. Headings are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

**32. Entire Agreement**

32.1. These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral: between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you confirm that you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.

**33. Print Terms Of Condition**

- 33.1 You are granting permission for Twisted Spire Digital Media Ltd to access and use undisclosed third party sites and their content for the sole purpose of preparing, evaluating, and ordering products (referred to herein as "Products"). Obtaining Products from Twisted Spire Digital Media Ltd does not entitle you to use any portion of Content apart from the finished Products as they are supplied by Twisted Spire Digital Media Ltd.
- 33.2 You agree to utilise and instruct Twisted Spire Digital Media Ltd in a responsible manner that is in full compliance with our Terms of Conditions and with your local laws and regulations, including export and import regulations.
- 33.3 Without limitation, no portion of Content may be utilized as a trademark or service mark, for any pornographic use, for any unlawful purpose or use, to defame any person, to violate any person's right of privacy or publicity, to infringe upon any copyright, trade name, trademark, service mark or other





- intellectual property right of any person or entity.
- 33.4 You agree that you will not instruct Twisted Spire Digital Media Ltd to produce Products that are offensive, unlawful, harassing, libellous, threatening, harmful, obscene, malicious or otherwise objectionable.
- 33.5 Twisted Spire Digital Media Ltd reserves the right, in Twisted Spire Digital Media Ltd.'s sole discretion, to refuse to accept any content provided by you to Twisted Spire Digital Media Ltd or to process any order at any time and for any reason.
- 33.6 Twisted Spire Digital Media Ltd also may terminate its service to and/or the accounts of customers found to be using Twisted Spire Digital Media Ltd to engage in undesirable activities or otherwise violating these Terms of Condition.
- 33.7 You agree that Twisted Spire Digital Media Ltd shall have no liability of any kind to you or to any third party arising from such refusal or termination.
- 33.8 You are solely responsible for your use of Content in combination with any other images, graphics, text or other materials you incorporate into your Products.
- 33.9 You agree that you will not include any text, image, design, trademark, service mark, or any copyrighted work of any third party in your Products unless you have obtained the appropriate authorisations from the owners.
- 33.10 You warrant that your Products do not infringe upon any rights of any third party, including copyright, trademark, right of publicity or privacy, and will not libel or defame any third party, and that you have all required rights or permissions necessary to incorporate third party material into your Products, including any third party material made available via a third party design service.
- 33.11 By placing an order Twisted Spire Digital Media Ltd, you warrant that you have all necessary permission, right and authority to

place the order and you authorise Twisted Spire Digital Media Ltd to produce the Products on your behalf.

- 33.12 You grant Twisted Spire Digital Media Ltd the right to copy, modify, distribute, use, create derivative works of and vectorise any content you have provided for the purpose of fulfilling your order and/or marketing products or services to you. Moreover, you warrant that you have sufficient rights to permit Twisted Spire Digital Media Ltd to copy, distribute, use, modify, create derivative works of and vectorise any provided content for the purpose of fulfilling your order and/or marketing products or services to you.

#### 34. Transfer of Title

- 34.1 The customer agrees that the risk of loss and title for any printed Product pass to you upon our delivery to our carrier. For any Product that is to be provided to the customer in an electronic format, the customer agrees that delivery of such Product shall be deemed to have occurred either (a) at the time we transmit the Product via email or other electronic communication addressed to the customer or (b) at the time we transmit a notification to the customer that the Product is available for downloading from Twisted Spire Digital Media Ltd or any third party site whom Twisted Spire Digital Media Ltd have utilised to fulfil our obligations to you.

#### 35. Right of Withdrawal

- 34.1 The legal right to withdraw from the agreement with us (also called the legal right to cancel the order) within 14 days does not apply to the order of a customised Product. In relation to any of the non-customised Products you have ordered from Twisted Spire Digital Media Ltd and those products or services do not attribute to your commercial or practical practice, you have a period of 14 days to withdraw from the agreement with us without giving any reason. The withdrawal period of 14 days will expire after 14 days from the day on which you

receive the Products, namely physical possession of the last good. To exercise the right of withdrawal you must contact Twisted Spire Digital Media Ltd directly.

#### 36. Indemnification

- 36.1 You agree that you shall indemnify Twisted Spire Digital Media Ltd and all parties from whom Twisted Spire Digital Media Ltd has licensed portions of Content, and their directors, officers, and employees, against all claims, liability, damages, costs and expenses, including reasonable legal fees and expenses arising out of or related to (i) your breach of these Terms of Use or (ii) any suit, claim, or demand arising from or relating to any text, photograph, image, graphic or other material that was not part of the standard Content and that you uploaded or otherwise provided to Twisted Spire Digital Media Ltd or incorporated into Products.
- 36.2 As to clause (ii), you agree that we have the right to control the defence of any such suit, claim or demand.

#### 37. Disclaimer of Warranty

- 37.1 CONTENT PROVIDED BY Twisted Spire Digital Media Ltd ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT OPERATION OF PROCESSING AND ORDERING YOUR PRODUCT OR CONTENT MAY NOT BE UNINTERRUPTED OR ERROR FREE. WHILE WE MAKE REASONABLE EFFORTS TO ACCURATELY PROVIDE THE ATTRIBUTES OF PRODUCTS, WE DO NOT WARRANT THAT PRODUCT DESCRIPTIONS ARE ACCURATE, RELIABLE AND ERROR-FREE. REFERENCES AND LINKS TO PRODUCTS OR SERVICES OF INDEPENDENT COMPANIES MAY BE PROVIDED. THESE REFERENCES AND LINKS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED.
- 37.2 Some jurisdictions may provide you with certain warranties or guarantees that cannot be excluded by contract ("consumer guarantees"), or only limited



in certain circumstances, and nothing in these terms of use alter those consumer guarantees if it is illegal for Twisted Spire Digital Media Ltd to do so.

- 37.3 If those consumer guarantees apply to you, and Twisted Spire Digital Media Ltd cannot legally exclude those consumer guarantees, then to the maximum extent permitted by law, Twisted Spire Digital Media Ltd: (1) excludes or limits those consumer guarantees; and (2) limits its liability at the option of Twisted Spire Digital Media Ltd to the following: (a) in the case of services, the supply of the services again or the payment of the cost of having the services supplied again; (b) in the case of goods, the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or acquiring equivalent goods; or the payment of the cost of having the goods repaired.
- 37.4 If you request a refund, the time it takes for your refund to arrive may depend on your bank. In most cases, you should receive your refund within 30 days.
- 37.5 Certain circumstances are beyond Twisted Spire Digital Media Ltd.'s control and may not be covered. Please note that we cannot be responsible for: Spelling, punctuation or grammatical errors made by the customer, inferior quality or low-resolution of uploaded images, design errors introduced by the customer in the document creation process, errors in user-selected options such as choice of finish, quantity or product type, and damage to the products arising after delivery to the customer.
- 37.6 Please preview your designs carefully and correct any mistakes prior to placing your order. Twisted Spire Digital Media Ltd does not proof documents created by its customers prior to processing. By placing your order with Twisted Spire Digital Media Ltd you are confirming that you have checked the proof email, and/or the products proof issued to you by Twisted Spire Digital Media Ltd and have fulfilled any reasonable request and correspondence by Twisted Spire Digital Media Ltd requiring you to check the proof email and/or proof products. Upon agreeing to purchase the products either verbally or via any other process then Twisted Spire Digital Media Ltd are

unable to make further changes to the product and will not be held accountable for any costs due to the products being printed and produced. No refund can be given for any product being printed which was agreed and confirmed by you.

**38. Limitation of Liability**

- 38.1 IN NO EVENT SHALL TWISTED SPIRE DIGITAL MEDIA LTD OR ITS LICENSORS, SUPPLIERS, OR VENDORS, OR THE OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS OF ANY OF THEM, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR FOR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT TWISTED SPIRE DIGITAL MEDIA LTD HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGE, OR OF FAILURE TO PROVIDE PRODUCTS OR SERVICES THAT YOU ORDER FROM TWISTED SPIRE DIGITAL MEDIA LTD OR ITS AFFILIATES, INCLUDING WITHOUT LIMITATION, DAMAGES ARISING FROM MISTAKE, OMISSION, VIRUS, DELAY, OR INTERRUPTION OF SERVICE. IN NO EVENT SHALL TWISTED SPIRE DIGITAL MEDIA LTD BE LIABLE OR RESPONSIBLE FOR ANY DAMAGES OR CONSEQUENCES ARISING FROM OR RELATED TO YOUR INAPPROPRIATE OR UNAUTHORISED USE OF CONTENT OR OUR SUPPLIED PRODUCTS OR SERVICES.
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- 38.3 The printed products are digital prints and reasonable limitations of what is to be expected from such products. Printed quality may vary in terms of colour, shade and quality between printed runs / batches compared to the original digital print.

- 38.4 The paper quality and finish may differ slightly between products and batches. There may be slight creases or marks on the products due to the way the products are processed by machinery. Printed products may have small marks on them caused by the print rollers and machinery. Trimming of the products may vary in quality and alignment from batch to batch.
- 38.5 Delivery times are estimates and Twisted Spire Digital Media Ltd are not able to accept any liability due to late delivery times and for issues out of our control.