Terms

Conditions of Supply of Internet Services

designplushosting Limited (hereinafter referred to as "DPH"), a provider of website design, and internet related services including web hosting, email, and domain name services. These Conditions set out the terms under which DPH will provide Services to the Client (as such terms are defined below). These Conditions will be supplemented from time to time by order confirmation forms setting out specific details relating to services requested by the Client and, as so supplemented, will apply to the exclusion of any other terms and conditions including any which the Client may attempt to introduce. DPH reserves the right to change, add, subtract or in way alter these Conditions without the prior consent of the Client.

To the extent that the Client is deemed to be a consumer (as defined by the Unfair Contract Terms Act 1977) then these Conditions will not affect the rights of the Client as a consumer and will apply to the extent that applicable law allows.

By logging into your account or updating files you are deemed to have accepted these terms and conditions and the acceptable user policy.

GENERAL PROVISIONS

1. Definitions

In these Conditions, the following expressions will have the following meanings, unless inconsistent with the context:

"Agreement"
: the agreement between DPH and the Client for the provision of Services formed by these Conditions and the Order Confirmation(s)

"Ancillary Systems"
: any Software and/or Equipment

"Associated Company"
: in respect of either party, a subsidiary or holding company of that party or any subsidiary of such holding company and the terms "subsidiary" and "holding company" will have the meanings given to them by sections 736 and 736A Companies Act 1985

"Business Customer"
: You are a business customer if you are an a commercial entity or an individual (a) registering, using or planning to use the Requested Domain as part of a business trade or profession; (b) at your sole discretion, purchasing a Domain Name for financial or Commercial gain, including, without limitation, for the sole purpose of placing advertisements on the Domain Name; (c) purchased 10 or more Domains and purport to act as a business customer as defined.

"Business Day"
: a day which is not a Saturday or Sunday or public or bank holiday in England and Wales

"Business Hours"
: 9am to 5pm on each Business Day

"Client Materials"

data, text, images, graphics, videos, logos and other content and material, hardware or equipment provided by the Client in connection with the Agreement for use by DPH in providing the Services

"Client"
as identified on the Order Confirmation(s)

"Client System"
the Client's computer system upon which the Software is loaded or otherwise in connection with which the Services are provided

"Conditions"
these conditions (in four parts) to be read in conjunction with the Order Confirmation(s)

"Consumer"
You are a consumer if You are an individual not: (a) registering, using or planning to use the Requested Domain as part of a business trade or profession; (b) purchasing a Domain Name during a "Sunrise" or "Landrush" period as defined in the Domain Name Conditions for the Domain Name Registry (c) at Your sole discretion, purchasing a Domain Name for financial or commercial gain, including, without limitation, for the sole purpose of placing advertisements on the Domain Name. You shall not be treated as a consumer under the contract if You have purchased or are the registered holder of 10 or more Domain Names.

"Defect"
any defect in systems having a material effect on the Client's use or operation of the Services or any failure by any Ancillary System to comply with any term of Part 2 of these Conditions

"Domain Services"
those domain registration and other related services (if any) provided to the Client by DPH pursuant to the Agreement, as described on a relevant Order Confirmation

"Equipment"
any hardware, cabling and/or other equipment provided to the Client by DPH in connection with the Agreement

"Fees"
the charges due to DPH under the Agreement in relation to the Services, as set out on the Order Confirmation(s)

"DPH"
123-Reg Limited trading as DPH, registered in England (Company No. 05306504), whose registered office is at 5th Floor, The Shipping Building, 252-254 Blyth Road, Hayes, UB3 1HA, United Kingdom

"Intellectual Property Rights"
any and all patents, trade marks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to the same

"Netiquette"
generally accepted standards and codes of practice for use of the internet including but not limited to sending bulk unsolicited email, mail bombing or impersonating another person, organisation or website

"Order Confirmation"
the order confirmation form(s) submitted by DPH to the Client by email or otherwise in writing for the provision of the Services, in response to the Client's order or request

"Services"

those development, implementation, consultancy, hosting and other services (if any) provided to the Client pursuant to the Agreement, as described on a relevant Order Confirmation, together with any Support Services and Domain Services

"SLA"
: the level of performance to be provided by DPH to the Client in respect of the Services, as set out on the Order Confirmation(s)

"Software"
: any communications or other software provided to or made available to the Client by DPH in connection with the Agreement, but excluding Third Party Software

"Support Services"
: those support and maintenance services provided to the Client pursuant to the Agreement, as described on a relevant Order Confirmation

"Support Hours"
: the hours during which DPH will provide the Support Services, as set out on a relevant Order Confirmation

"Third Party Software"
: any software identified as third party software (if any) to be provided to the Client pursuant to the Agreement, as set out in a relevant Order Confirmation

"Use the Software"
: to load the Software onto and store and run it on the Client System and/or Equipment in accordance with the terms of the Agreement

2. Interpretation

2.1 The headings used in the Agreement are inserted for convenience only and are not intended to be part of nor to affect the meaning or interpretation of any of the Agreement.

2.2 In the Agreement the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require.

2.3 The expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.

2.4 In the event of a conflict between any of these Conditions and any Order Confirmation, the conflict will be resolved according to the following order of priority: these Conditions then the Order Confirmation.

2.5 The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.

2.6 The Agreement (as varied in accordance with its terms) forms the entire understanding of the parties in respect of the matters dealt within it and supersedes all previous agreements, understandings and negotiations between the parties.

2.7 The parties do not intend that any of the terms of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not party to it.

2.8 References in these Conditions to clauses means clauses of these Conditions. References in these Conditions to the provisions of statutes or statutory instruments are deemed to include those provisions as amended or substituted

3. Service Provision

3.1 The Services are described or referred to on the Order Confirmation(s). DPH agrees to supply the Services to the Client on the following conditions, these conditions are not an offer to provide service but a statement of the terms on which we will provide them.

3.2 DPH will use its reasonable endeavours to provide the Services in accordance with any timescale set out on the Order Confirmation(s), but will not be liable to the Client where, based on those reasonable endeavours, it fails to meet any timescale.

3.3 DPH will not be liable for any failure to provide the Services resulting from any breach by the Client or its employees, agents or subcontractors of the Agreement.

3.4 DPH will not be obliged to provide any services not referred to on the Order Confirmation(s). Furthermore, DPH cannot provide the Services where the Client makes use of incompatible communication systems.

3.5 The terms of the Agreement form the entire agreement between DPH and the Client in relation to the Services and all other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law. The Client may not rely upon any representation made or given by any employee of DPH prior to the Agreement being entered into unless confirmed in the Agreement.

3.6 DPH reserves the right at any time and from time to time improve, correct or otherwise modify all or any of the Services (including substituting Software and/or Equipment. DPH will endeavour to give the Client reasonable notice of any such modification, where this is reasonably practicable.

3.7 DPH will, upon arrangement and provided that no Fees are due and payable, allow the Client reasonable access to any co-located server hosted by DPH as part of the Services during Business Hours. Access will only be granted to the Client if DPH is given at least 3 Business Days' notice in writing that access is required and acceptance of that request has been confirmed in writing to the Client by DPH.

Suspension

3.8 Without prejudice to its other rights and remedies, DPH may at its sole discretion suspend the provision of the whole or any part of the Services (temporarily or permanently) and will have no liability to provide the Services on the occurrence of any of the following events:

3.8.1 notified or unscheduled upgrade or maintenance of DPH's IT systems;

3.8.2 issue by any competent authority of an order which is binding on DPH which affects the Services;

3.8.3 if the Client fails to pay any Fees or any other sums owing to DPH by the Client when they fall due;

3.8.4 if an event occurs and DPH deem it to be appropriate to terminate the Agreement;

3.8.5 if the bandwidth or computer memory used by the Client in relation to the Services exceeds any agreed or stipulated level and DPH determines in its sole discretion that suspension is necessary to protect all and any internet solutions provided by DPH from time to time;

3.8.6 if the size of an email, mailing list or cron job used by the Client exceeds any agreed or stipulated size, level or frequency and DPH determines in its sole discretion that suspension is necessary to protect all and any internet solutions provided by DPH from time to time; or

3.8.7 failure or deficiencies in the Client System referring but not limited to hardware, server corruption and security breaches.

3.8.8 failure by the Client to adhere to any of the provisions outlined in DPH's acceptable usage policy.

Where DPH suspends provision of the Services in accordance with clause 3.8.3, it will only be obliged to recommence provision during Business Hours and once the Client has paid all relevant outstanding sums in clear funds together with any relevant reinstatement fee (as published from time to time by DPH) and has accepted any revised payment terms requested by DPH (such as payment by direct debit).

3.9 The Client will provide to DPH those Client Materials identified on the Order Confirmation(s) within a reasonable time period taking account of the obligations of DPH under the Agreement.

3.10 The Client warrants that the Client Materials will be accurate in all material respects and will not knowingly include material which is illegal, the accessing holding transmitting or supplying of

which would be a criminal offence or which is otherwise unlawful or in breach of any applicable law or code of practice applying to such materials. In particular, the Client warrants that all necessary licences, consents and waivers (including those from rights owners, performers and other contributors) are obtained and paid for by the Client. Without prejudice to the foregoing, DPH may decline to use any Client Materials on any reasonable grounds.

3.11 The Client will supply in a timely manner all information, instructions, review and feedback reasonably required by DPH in connection with the performance of its obligations under the Agreement and will appoint a representative who is fully empowered and authorised to provide the same.

4. Service Delivery

4.1 The Client acknowledges that, given the nature of such services, DPH cannot guarantee that the Services, when delivered via the internet, will be uninterrupted or error free.

4.2 To the fullest extent permitted by law and save as provided elsewhere in the Agreement, the Services and any Client Systems and Ancillary Systems are provided by DPH to the Client on an "as is" and "as available" basis and no warranty or representation (express or implied) of any kind are given in connection with the Agreement including as to satisfactory quality and fitness for a particular purpose. In particular, DPH gives no warranty or representation that:

4.2.1 the Services will meet the Client's requirements;

4.2.2 the Services will be provided on an uninterrupted, timely, secure or error-free basis; or

4.2.3 any results obtained from use of the Services will be accurate, complete or current.

4.3 DPH warrants that it will provide the Services with reasonable care and skill and in accordance with any SLA. DPH will not be liable for a breach of such warranty unless the Client notifies DPH in writing of such failure within 14 days of the Client becoming aware of the failure.

4.4 If the Client makes a valid claim against DPH based on a failure by DPH to comply with the warranty set out in clause 4.3 DPH may, at its option, take such steps as it deems necessary to remedy such failure or refund such part of the Fees as relates to such Services, provided that the liability of DPH under such warranty will in no event exceed one and a quarter times the amount of the Fees paid to DPH by the Client (excluding VAT and expenses) in the 12 month period prior to the date on which the Client makes the claim. If DPH complies with this clause, it will have no further liability for a breach of the said warranty.

5. Client's Obligations

5.1 The Client agrees that it shall:

5.1.1 save as provided in any Order Confirmation, be responsible for keeping regular and full back ups of all material and data hosted by DPH on any web site or other system operated by the Client on a daily basis (or more frequent basis if required by best computing practice) including the Client System and/or Ancillary Systems. For the avoidance of any doubt DPH will not attempt to restore any lost material or data of the Client's except where such loss occurred as a direct result of aDPH server crash;

5.1.2. immediately notify DPH on becoming aware of any unauthorised use of all or any of the Services and/or relevant part of the Client System;

5.1.3 remove or prevent access to any material hosted on any of the Equipment and/or Client System which causes or is likely to cause the Client to be in breach of the Agreement;

5.1.4 ensure that it has all necessary consents, permissions and licences to make use of the Services including registration and appropriate consents and approvals under the Data Protection Act 1998;

5.1.5 ensure that all material or data hosted by DPH on any web site operated by the Client from time to time or communicated through such site or using the Client System is checked for viruses and other harmful code and has appropriate security patches applied;

5.1.6 independently monitor its bandwidth in relation to the use of Services and report to DPH any use of bandwidth over and above those agreed or stipulated levels set out in the Order Confirmation,;

5.1.7 be entirely liable for all activities conducted and charges incurred under its passwords and user names whether authorised by it or not and the Client acknowledges that DPH shall not be liable for any loss of confidentiality or for any damages arising from the Client's inability to comply with these Conditions;

5.1.8 comply with any security policy notified to it from time to time by DPH and, in particular, ensure that all passwords and user names provided to it by DPH are at all times kept confidential, used properly and not disclosed to unauthorised people. If the Client has any reason to believe that any password or user name has become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way or of any other breach of security then the Client will inform DPH immediately;

5.1.9 ensure that all communication details which it provides to DPH are at all times true, current, accurate and complete. The Client will promptly notify DPH of any change to such details and acknowledges that DPH will not be liable for any loss suffered or incurred by the Client as a result of its failure to notify such changes to DPH. Clients are advised that a failure to at all times have true, accurate and complete communication details may result in the temporary suspension of a Client's account; and

5.1.10 ensure that its systems (including the Client System) meet any minimum system specifications notified to the Client from time to time.

5.1.11 promptly provide to DPH and/or its consultants, employees and agents such information and assistance as they may reasonably require in order to be able to carry out the Services and, where relevant, deliver and install any Ancillary Systems.

5.1.12 will procure all necessary rights from third parties (including intellectual property licences of computer software and website content including ringtones and music) which are from time to time required in order for DPH to be able legally to provide the Services to the Client.

5.1.13 obtain and maintain insurance over all parts of the Client System which are located on the premises of DPH or any of its Associated Companies and to provide evidence that such insurance is in place, upon DPH's demand;

5.1.14 complete its own checks to ensure that any registration or renewal has been made successfully.

5.2 The Client agrees that it shall not:

5.2.1 use the Services, Ancillary Systems and/or Client System or allow them to be used for any unlawful purpose or for the publication, linking to, issue or display of any unlawful material (including any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights including Intellectual Property Rights of any third party or which is or encourages criminal acts or contains any virus, worm, trojan horse or other harmful code) whether under English law or regulation, the laws or regulations of the Client's country or any other place where the results of such purpose or the material in question can be accessed;

5.2.2 use the Services, Ancillary Systems and/or Client System or allow them to be used for the publication, linking to, issue or display of any material which in the absolute discretion of DPH may harm DPH or any of its Associated Companies or

clients or bring DPH into disrepute or which calls into question any action taken by DPH on the Client's behalf;

5.2.3 use the Services, Ancillary Systems and/or Client System or allow them to be used in breach of good Netiquette practices;

5.2.4 provide any technical or other information obtained from DPH and/or relating to the Services to any person which the Client is aware or ought reasonably be aware may directly or indirectly lead to a breach of any law or regulation;

5.2.5 in breach of good Netiquette practices, use any service provided by any third party (including an internet web site and/or email) for the publication, linking to, issue or display of any material which refers to an internet web site hosted by DPH or any other products or services offered by DPH from time to time without DPH's prior written consent;

5.2.6 use any part of the DPH premises except as is reasonably necessary to inspect and maintain any co-located server hosted as part of the Services and the Client shall ensure that such server is kept in good condition and is in its original condition upon the termination of such hosting;

5.2.7 whilst present at any DPH premises, do anything which may be dangerous or a nuisance or inconvenience or to disturb, threaten or abuse any DPH personnel or other DPH clients and the Client shall abide by all health and safety and other policies as DPH may notify to the Client from time to time in relation to any such premises.

5.3 The Client acknowledges that it has appropriate knowledge of how the internet functions, the systems and products provided to it in connection with the Agreement and what types of use and content are and are not acceptable. The Client acknowledges that DPH shall have no obligation to:

5.3.1 train the Client on its use of the Services or any Ancillary System;

5.3.2 manipulate any material which the Client wishes to and/or does post on any web site or other system it operates (including any Client System) or any communication which it issues or sends in connection with any Services; or

5.3.3 validate or vet such material for usability, legality, content or correctness.

5.4 The Client also acknowledges that the services and products provided by DPH are standard packages which are not tailored to specific requirements of the Client, unless confirmed in writing by DPH to the contrary.

5.5 If, in DPH's opinion, the Client is in breach of any of the provisions contained in clause 5.2 then DPH may without prejudice to its other rights and remedies immediately by written notice to the Client:

5.5.1 suspend provision of the Services;

5.5.2 terminate the Agreement; or

5.5.3 amend or remove any Client Materials and/or content appearing on any website or other system hosted by DPH on behalf of the Client (including any Client System or Ancillary System).

DPH may also notify appropriate public authorities (governmental or otherwise including the police or other enforcement authority) of any such breach, where it deems necessary.

5.6 Where as part of the Services the Client is entitled (having obtained DPH's prior written consent) to resell the whole or any part of the Services to a third party then the Client will:

5.6.1 procure such third party's compliance with and acceptance of these Conditions;

5.6.2 be fully responsible for the acts and omissions of any such third party; and

5.6.3 indemnify DPH for any losses it suffers as a result of such acts or omissions.

5.7 The Client acknowledges and understands that it is required to comply with PCI DSS. The Client is responsible to encrypt sensitive data using appropriate methods. For further details

on PCI DSS Compliance and the Client's responsibilities in upholding the standard they need to contact the PCI Security Standards Council.

6. Payment Terms

6.1 The Fees are payable to DPH subject to the following conditions:

6.1.1 Fees payable monthly, quarterly or yearly will be paid in advance and will not be refundable in whole or part if the Agreement or any relevant part is terminated during the period to which the payment relates. Clients will automatically be charged again at the end of their prepay period unless the Client has followed the procedure as per clause 12.1.1;

6.1.2 any set up fee will (unless stated to be included within later payments) be payable immediately;

6.1.3 additional Fees will become payable if the Client exceeds agreed or stipulated bandwidth use levels. In the event that the Client exceeds the agreed or stipulated bandwidth levels an additional invoice will be produced and sent to the client which must be paid within thirty (30) days. Additional Fees are charged at the rate of £0.005 per every Mega Byte the Client exceeds over their agreed or stipulated bandwidth level.

6.2 Any total sum for the fees set out in an Order Confirmation is (unless stated in the Order Confirmation to be a fixed and firm amount) an estimate of the fees only and not a fixed price quotation.

6.3 Any sums payable by the Client to DPH under the Agreement are exclusive of value added tax or any similar taxes, levies or duties, which will be added to such sums and be payable by the Client at the appropriate rate.

6.4 The Client agrees to pay DPH's invoices within 7 days of invoice due date.

6.5 If invoices are not settled in full by then, the Client will without prejudice to its other rights and remedies (including the right to suspend the Services under clause 3.8.3) be liable to pay interest on any sum outstanding from the due date for payment at the annual rate of 6% above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis until payment is made whether before or after any judgment.

6.6 All Accounts that have any unsettled invoices 20 days after their due date will be suspended. If a further invoice falls due during the suspension of the Client's account then this will be added to outstanding balance owed by the Client.

6.7 All accounts that have any unsettled invoices 20 days after the due date will be passed onto a Debt Recovery Agency, where additional recovery charges and court cost may accrue.

6.8 All sums payable to DPH under the Agreement must be paid in full with no set off or deduction.

6.9 DPH has a general and particular lien over the Client System until all claims and money payable by the Client to DPH on any account whatsoever have been received in full clear funds. If the Client fails to discharge any lien within a reasonable time from the date of notice of exercise then the Client System may be sold in or towards satisfaction of that lien and DPH will account to the Client for any excess.

6.10 DPH may make a search in relation to the Client with a credit reference agency (and make other credit enquiries from time to time), keep a record of that search and enquiries, and share that information with third parties. DPH may also make enquiries about the principle directors/proprietors of the Client with a credit reference agency.

6.11 Where the Client authorises payment of any of the Fees by credit and or debit card (including those associated to a PayPal account) then DPH may deduct other amounts becoming payable to it under the Agreement from that credit or debit card without obtaining additional authorisation from the Client.

6.12 Without prejudice to any other of its rights and remedies, DPH will be entitled to remove the Client's data from its systems and any Equipment and/or put the Equipment to any use other than the Client's if any amount due under the Agreement is not paid within 21 days of its due date for payment. DPH is not required to back up such data or return the same to the Client prior to any such removal or following termination of the Agreement.

6.13 Credit and Vouchers

6.13.1 Credit and/or vouchers may be provided to Customers as an alternative resolution to a matter or for any other reason, at the discretion of DPH.

6.13.2 Credit and vouchers are non-refundable and may not be exchanged for cash or redeemed against the purchase of another voucher.

6.13.3 DPH will not accept liability if the credit or voucher has been lost, stolen, destroyed or used without the Customer's consent. DPH will not replace the credit or voucher or any remaining balance outstanding on the credit or voucher.

6.13.4 Resale, trade, sale or reproduction of a DPH credit or voucher is prohibited. Any attempt to carry out this act may potentially void the credit or voucher at DPH's discretion.

6.13.5 If the full amount of the credit or voucher is not redeemed in one transaction, the remaining balance will be credited to the Customer in a further creditor voucher.

6.13.6 DPH credit or vouchers may be used to purchase goods or services of a higher price than the face value of the credit or voucher upon payment of the difference in value.

6.13.7 DPH credit or vouchers will remain valid for a period of 12 months only from the date of issue. Any unused credit or voucher will be void upon the expiry of the validity period.

7. Confidential Information

7.1 Each party will (unless contrary to law):

7.1.1 keep confidential all information obtained from the other under or in connection with the Agreement ("Information");

7.1.2 not disclose any Information to any third party without the prior written consent of the other except to such persons and to such extent as may be strictly necessary for the performance of the Agreement;

7.1.3 not use any Information otherwise than for the purposes of the Agreement.

7.2 The provisions of clause 7.1 do not apply to Information which:

7.2.1 is or becomes public knowledge (otherwise than by breach of this clause); or

7.2.2 was in the possession of the party concerned without restriction as to its disclosure before receiving it from the disclosing party; or

7.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;and nothing in this clause 7 prevents either party from disclosing any Information for a proper purpose to a public authority or any regulatory body, or to a court of law in the United Kingdom or elsewhere in legal proceedings, or to its senior management, its auditors, bankers, lawyers or other professional advisers.

7.3 The provisions of this clause 7 will continue to apply notwithstanding termination of the Agreement.

7.4 The Client, by entering into the Agreement, consents to DPH sending to the Client by whatever means the Company deems appropriate (whether by email or otherwise) information concerning new products and other services that DPH and its Associated Companies may from time to time offer.

8. Intellectual Property

8.1 The Client acknowledges and agrees that it will not own or acquire any rights under this Agreement in any Intellectual Property in or relating to the Services or created in performing the Services and that it will have no other rights in or to the Services other than the rights expressly granted by the Agreement.

8.1.1 the provision by DPH of Services making use of information or specifications supplied by the Client;

8.1.2 the Client's failure to procure all necessary rights from third parties which are from time to time required in order for DPH to be able legally to provide the Services; or

8.1.3 the use by DPH in connection with the Agreement of the Client System and the Client Materials.

8.1.4 No Intellectual Property Rights created or acquired by DPH will transfer or be assigned to the Client unless DPH and the Client have signed a written assignment document to that effect.

8.1.5 The Client shall keep the Ancillary Systems in good condition during the continuance of the Agreement and free of all charges, liens and encumbrances and protect it from any and all judicial process.

9 Liability

9.1 The provisions of this clause sets out the entire liability of DPH (including any liability for the acts or omissions of its consultants, employees, agents and authorised representatives) to the Client in respect of:

9.1.1 any breach of the Agreement; and

9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.

9.2 Nothing in the Agreement excludes or limits the liability of DPH for death or personal injury caused by the negligence of DPH, fraud or a breach of section 12 of the Sale of Goods Act 1979.

9.3 Subject to clauses 9.2 the total liability of DPH in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Agreement is limited to:

9.4 £500 per breach for loss of or damage to tangible property; and

9.5 for any other kind of loss, one and a quarter times the amount of sums paid by the Client to DPH pursuant to the Agreement (excluding VAT and expenses) during the preceding 12 month period.

9.6 DPH will not be liable to the Client in contract, tort, misrepresentation or otherwise (including negligence), for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, or for any loss of profit, loss of business, loss of revenue, loss of contract, loss of goodwill or otherwise (whether direct or indirect), and whether or not caused by the negligence of DPH or its employees, agents or authorised representatives, which arises out of or in connection with the Agreement.

9.7 The Client acknowledges that the allocation of risk in the Agreement reflects the price paid for the Services and that it is not within the control of DPH how or for what purposes they are used.

9.8 Where the Client accesses DPH's services from locations outside the UK, the Client does so, on the Client's own initiative and is responsible for compliance with local laws.

10 Client Indemnity

The Client will fully indemnify and keep DPH its parent company, sister companies, subsidiaries and affiliates, officers, partners, directors employees and agents fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by it and arising from any of the following:

10.1 the Client's breach of the Agreement, negligence or other default;

10.2 the operation or break down of any IT systems owned or used by the Client including the Client System but not the Equipment; or

10.3 the Client's use or misuse of the Services.

11. Force Majeure

Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use or access to the IT systems of DPH or the Client, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.

12. Term and Termination

Without prejudice to the remaining provisions of this clause 12 and any other rights and remedies available to DPH:

12.1 DPH will provide the Services for the period of 12 months from the date of the relevant Order Confirmation or, where different, any other period of supply stated on the Order Confirmation (such period being termed the "Initial Period") and will continue beyond that period, subject to termination by:

12.1.1 the Client upon serving 30 days' written notice on DPH following completion of DPH's prescribed template procedures for terminating the whole or any part of the Agreement (details of which can be obtained from DPH's Customer Services Team); or

12.1.2 DPH serving 30 days' written notice on the Client to expire at any time after the Initial Period

12.2 DPH may immediately terminate the Agreement (or at its option, any part of it) by notice in writing to the Client if the Client fails to pay to DPH any sum due under the Agreement after the due date for payment.

12.3 Either party may terminate the Agreement (or, at its option, any part of it) forthwith by notice in writing to the other if the other party:

12.3.1 is in material breach of the Agreement and fails (where the breach is capable of remedy) to remedy the breach within 30 days of the receipt of a request in writing to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of the Agreement;

12.3.2 becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;

12.3.3 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

12.3.4 has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, has passed a resolution for its winding-up, or has a petition presented to any court for its winding-up or for an administration order; or

12.3.5 has ceased or threatened to cease to trade.

12.4 Clients that have purchased the Services as Consumers have the right to cancel the Agreement within 7 working days at no additional cost from either (a) the date the contract is formed; or (b) the date that the Client receives confirmation that the contract is formed from DPH or whichever is the later. For the purposes of this clause, the date the contract is formed shall be the date that the Client presses the "Order" button thereby granting consent that the Service commences.

12.4.1 The Client can exercise its right to cancel by contacting DPH at support@designplushosting.co.uk.

12.4.2 The Client will no longer have the right detailed in clause 12.4 when, DPH has commenced the Service with the Client's consent. For the purposes of this clause the Client's consent will be deemed to be given upon the Client pressing the "Order" button.

12.4.3 If you do not wish to waive these rights, then DPH will be unable to commence the Service until the end of the relevant cooling off period which is 7 working days.

13 Consequences of Termination

13.1 Termination of the Agreement is without prejudice to the rights and duties of either party accrued prior to termination.

13.2 The clauses of the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

13.3 DPH will without notice remove the Client's data from its systems and any Equipment following termination. For the purposes of this clause, the date of termination will be either the date that DPH receives signed authorisation from the Client instructing cancellation of account or the date of expiry of notice of termination served in accordance with these Conditions.

13.4 Upon termination of the Agreement, the Client will forthwith:

13.4.1 cease to use the Software, Equipment and Services;

13.4.2 erase the Software from the Client System and certify to DPH that this has been done;

13.4.3 return to DPH any hardware or other equipment loaned to the Client in connection with the Services or any other materials and equipment owned by DPH; and

13.4.4 pay all outstanding invoices raised by DPH pursuant to the Agreement.

13.5 In the event of termination of the Agreement by the Client part way through the Initial Period, the Client remains obliged to pay for Services comprising the provision of dedicated server hosting for the remainder of that period.

13.6 Where following termination, DPH is unable to cancel any registration of a domain name registered on behalf of the Client, it may levy a minimum charge to cover the cost of administration and the domain registration fee.

13.7 Where the Client services include the purchase of licensing for software by DPH on behalf of the client, in the event of termination of the agreement by the client, DPH are unable to refund any proportion of the software and/or licensing fees incurred.

14. Severability

The illegality, invalidity or unenforceability of any provision of the Agreement will not affect the legality, validity or enforceability of the remainder. If any such provision is found by any court or competent authority to be illegal, invalid or unenforceable, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

15. Waiver

15.1 The failure or delay by either party in exercising any right, power or remedy of that party under the Agreement will not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under the Agreement will not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

15.2 Any waiver by either party of a breach of or default under any of the terms of the Agreement by the other party is not deemed a waiver of any subsequent breach or default and in no way affects the other terms of the Agreement.

16. Assignment and Subcontracting

The Client may not assign the benefit or delegate the burden of the Agreement nor sub-license any of its rights under the Agreement (including to its Associated Company) without the prior written consent of DPH. Any consent provided by DPH under this clause is given on condition that the assignee or licensee, as the case may be, agrees to comply with the terms of the Agreement as if they were the Client. DPH may sub-contract or assign any or all of its rights and obligations under the Agreement.

17 Amendments

No variation or amendment to the Agreement (including any Order Confirmation) is effective unless agreed in writing and signed by an authorised representative of DPH.

18 Notices

Any notice to be given or made by either party under or in connection with the Agreement must be in writing and given or made to the other party at its address stated in the Order Form or to such other address as either party may from time to time notify to the other. Every notice, if so addressed, is deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the relevant party, if sent by prepaid first class post, two Business Days after the date of posting and if transmitted by facsimile, at the time of transmission (provided a confirmatory letter is sent by prepaid first class post) provided that, where, in accordance with the above provisions, any notice would otherwise be deemed to be given or made on a day which is not a Business Day or after 4.00 p.m. on a Business Day, such notice shall be deemed to be given or made at 9.00 a.m. on the next Business Day. DPH may additionally serve notice on the Client under or in connection with the Agreement by email to the Client by sending an email to the contact email address stated on the Order Confirmation(s) or, in the case of a Client for whom DPH has registered a domain name, to webmaster@[registered domain name], and in such a case the email will be deemed sent once transmitted from DPH's email server.

19. Applicable Law and Jurisdiction

The construction, performance and validity of the Agreement will be governed by English law and the English courts have jurisdiction to settle any disputes which may arise out of or in connection with it.

DOMAIN SERVICES

Service Provision

2.1 DPH will provide the Domain Services to the Client upon the terms and conditions set out in this Parts 1 of these Conditions.

2.2 The Client undertakes and warrants to DPH that the registration of any domain name requested by it (a "Requested Domain"):

2.2.1 and the manner in which it is to be directly or indirectly used will not infringe any third party rights; and

2.2.2 is not being made in bad faith or could be considered to be an abusive registration under the ENOM or Nominet dispute resolution policies, whichever is appropriate.

2.2.3The Client also confirms and warrants that any Requested Domain is not being registered and will at no time whatsoever be used for any unlawful purpose.

2.3 The Client acknowledges that, whilst DPH will use its reasonable endeavours to register a Requested Domain, DPH will not be obliged to accept any request to register or continue to process any registration of a Requested Domain.

2.4 The Domain Services are limited to forwarding the application for registration to the relevant naming authority, providing reasonable administration services in relation to the application and notifying the result of the application to the Client within a reasonable period after communication from the authority. DPH will use reasonable endeavours to notify the Client of any renewal dates however DPH accepts no liability for the loss of registration of any Requested Domain.

2.5 DPH makes no representations or warranties (expressed or implied) of any kind (and they are expressly disclaimed) with respect to availability or likelihood of registration of any Requested Domain. The Client acknowledges that DPH cannot guarantee the reservation or registration of any Requested Domain and that the registration of such domain name will be subject to any registration requirements of the appropriate registry.

2.6 The Client will check that the domain name as reported on all documents sent to the Client (such as invoices and e-mail notifications) is spelt correctly. The Client will notify DPH of any incorrect spellings of a Requested Domain promptly and in any event within 24 hours of receiving such document.

2.7 The Client will at all times comply with the terms and conditions (from time to time subsisting) applying to the registration of domain names published by the relevant naming authority (including the domain dispute resolution policy of that authority) and any other authority having similar force.

2.8 If the Client wishes to transfer ownership of a Requested Domain then it will procure that all necessary consents to that transfer are obtained and will deliver up to DPH, on demand, documentary evidence of that all such consents have been obtained. The Client agrees that prior to transferring ownership of a Requested Domain to another person (the "Transferee") the Client will procure that the Transferee agrees in writing to be bound by the terms of the Agreement. A Requested Domain will not be transferred until DPH receives such written assurances as it requires that the Transferee is bound by the terms of the Agreement.

2.9 DPH will not transfer ownership of a Requested Domain until all Fees attributable to the Domain Services which are due have been paid by the Client to DPH.

2.10 DPH may from time to time change the registrar that a Requested Domain is held with, at its discretion and without notice to the Client.

2.11 The Client agrees and acknowledges that DPH will make registration information provided by the Client in relation to the Requested Domain available to ENOM, Nominet or any other appropriate registration authority, the registry administrators, and other third parties as applicable laws may require or permit including the police or other enforcement authority. The Client further acknowledges that DPH may make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information provided, for purposes of inspection (such as through the WHOIS service) or other purposes as required or permitted by ENOM, Nominet and applicable law. The Client consents to any and all such

disclosures, whether during or after the term of registration of the Requested Domain. The Client irrevocably waives any and all claims and causes of action arising from such disclosure or use of the domain name registration information by DPH.

2.12 DPH will only allow a domain name owned or managed by the Client to be attached to the ISP tag of DPH or any of its Associated Companies if the Client has an active hosting account with DPH unless otherwise agreed in writing by an authorised representative of the company.