

70 High Street Sunninghill Ascot Berkshire SL5 9NN

Terms & Conditions for use of TouchTools, Domain Name and Hosting services

A GENERAL

1 Definitions

1.1 In these Conditions, the following words and expressions have the following meanings:

“Accredited Registrar”	means an ICANN accredited registrar;
“Back-up Services”	means the data back-up, storage and restoration service provided by Delphi Creative and detailed in Section C of these Conditions;
“Co-location Services”	means the website co-location services provided by Delphi Creative and detailed in Section C of these Conditions;
“Co-location Data Centre”	means the physical location in which Co-location Services are provided;
“Conditions”	means these terms and conditions;
“Contract”	means the contract for the provision of Services by Delphi Creative to the Customer governed by the Order Form and these Conditions;
“Customer”	means the customer to whom Delphi Creative has agreed to provide the Services and whose details appear on the Order Form;
“Customer Server”	means any computer server equipment operated and owned by the Customer;
“Customer Site”	means any Website of the Customer which is the subject of the Hosting Services;
“Dedicated Server”	means the computer server equipment provided by Delphi Creative for the sole use of a single customer;
“Dedicated Server Services”	means the provision of a Dedicated Server for use by the Customer;
“Domain Name Services”	means the processing of Orders with the Relevant Naming Authority on the Customers’ behalf and such additional services as may be agreed between the parties. Section B of these Conditions relates to Domain Name Services;
“Delphi Creative”	means Delphi Creative Limited (Company Number: 3760132) trading as “Delphi Creative Ltd”, whose registered office is at 70 High Street Sunninghill Ascot Berkshire SL5 9NN and its employees, agents or sub-contractors (as appropriate);
“Delphi Creative Server”	means the computer server equipment operated by Delphi Creative for the provision of the Hosting Services;
“Email Services”	means the email services provided by Delphi Creative and detailed in Section C of these Conditions;
“Fees”	means the fees published (including the Pre-registration Fee and Deposit payable in respect of the Pre-registration Services) by or on behalf of Delphi Creative from time to time on the Website and payable in pounds sterling;
“Global Domains”	means domains which are not country specific including without limitation .com, .net, .org, .info, .biz and .name;
“Hosting Services”	means Web-Hosting Services, Email Services, Co-location Services, Dedicated Server Services and Back-up Services, collectively known as the Hosting Services and detailed in Section C of these Conditions;
“Intellectual Property Rights”	means any intellectual property rights or other proprietary rights including but not limited to copyright, design rights, trademarks or names and patents in each case whether registered or unregistered names;
“Order”	means the Customers application for the Services;
“Order Form”	means the order form and customer sign-up pages annexed to these Conditions or as displayed by or on behalf of Delphi Creative on the Website as at or prior to the date of the Contract;
“Regulations”	means the Consumer Protection (Distance Selling) Regulations 2000;

“Order Form”	means the order form and customer sign-up pages annexed to these Conditions or as displayed by or on behalf of Delphi Creative on the Website as at or prior to the date of the Contract;
“Regulations”	means the Consumer Protection (Distance Selling) Regulations 2000;
“Registry”	Means the organisation that has been granted the rights to maintain the definitive database of registrations for a particular TLD, namely Verisign for .com, .net and .org domains, Neulevel for .biz domains, Afilias for .info domains and Global Name Registry for .name domains;
“Relevant Naming Authority”	means Nominet UK for UK domain names, ICANN for international domain names and the .TV Corporation for .tv domains;
“Secure Hosting Services”	means the website hosting services provided on Delphi Creative’s Secure Servers and detailed in Section C of these Conditions;
“Secure Server”	means a Delphi Creative Server that has a recognised digital certificate installed to allow SSL (Secure Socket Layer) encryption;
“Services”	means any services provided by Delphi Creative to the Customer under this Agreement including without limitation, provision and use of the TouchTools Content Management System, Domain Name Services, Hosting Services, Back Up Services, Email Services, Web Re-direction Services, Co-location Services and Dedicated Server Services.
“Shared Certificate”	means a shared certificate encryption ID issued by Verisign;
“Site Seal”	means a seal issued by Verisign that enables a visitor to the seal owner’s website to link to a page at Verisign’s website, which shall display certain authentication information related to the organisation and domain listed in the seal;
“TouchTools”	means the TouchTools Content Management Software and collection of tools
“Web-Hosting Services”	means the website hosting services provided by Delphi Creative and detailed in Section C of these Conditions;
“Website”	means Delphi Creative’s Website accessible via the Internet address or such other address as Delphi Creative shall notify to the customer from time to time.
“Web Re-direction”	means a service provided by Delphi Creative whereby a domain can be configured so that it re-directs an internet user to a website located at a different internet address.

1.2 Where appropriate, words denoting a singular number only shall include the plural and vice versa and words referring to an individual shall include a firm or company as appropriate and vice versa.

1.3 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted or consolidated and all statutory instruments or orders made pursuant to it.

1.4 All warranties, representations, indemnities, covenants, agreements and obligations given or entered into by more than one person in this Agreement are given or entered into jointly and severally.

1.5 The headings in these Conditions are inserted only for convenience and shall not affect their construction.

2 Application of Conditions

2.1 These Conditions, the Order Form and any terms specifically agreed in writing by Delphi Creative supersede any terms stipulated by the Customer in any negotiations or any course of dealing between Delphi Creative and the Customer.

2.2 The Customer acknowledges that there are no representations outside the Contract that have induced it to enter into the Contract, and the Contract constitutes the entire understanding between the parties for the provision of the Services. All other terms and conditions express or implied by statute or otherwise are excluded to the fullest extent permitted by law.

2.3 Unless otherwise provided in these Conditions no modification of the Contract shall be effective unless agreed in writing by a duly authorised representative of Delphi Creative.

2.4 Delphi Creative may from time to time amend these Conditions and any such amendment will be displayed at least one month prior to the implementation of the amendment. If the Customer is a consumer it may end the Contract by written notice at any time up to the date on which the amendment comes into force. Should the Customer place an Order or continue to use the Services following implementation of an amendment it will be deemed to have accepted the amendment.

3 Obligations of the Customer

3.1 The Customer shall not:

3.1.1 submit to Delphi Creative any Order that it knows or should (after reasonable enquiry) have discovered, infringes or might reasonably be considered to infringe the Intellectual Property Rights of any third party;

3.1.2 use the Delphi Creative Server or any of the Services in any way that might reasonably be considered to infringe the rights of any third party, including but not limited to trademark infringement, copyright infringement, passing off and defamation.

3.1.3 reverse engineer, de-code or in any way disassemble any software provided by Delphi Creative in relation to the provision of the Services;

3.1.4 use the Delphi Creative Server or any of the Services to send, relay, upload, post or receive replies to any unsolicited or unauthorised e-mail messages, mobile phone messaging or any other form of messaging, promotional materials, junk mail, spam, chain letters or other form of solicitation;

3.1.5 advertise a Customer Site, domain or any product or service offered by or through a Customer Site or domain hosted by Delphi Creative using unsolicited or unauthorised means including junk mail, spam, chain letters or any other form of solicitation; or

3.1.6 enter any incorrect or incomplete name, address, email address or telephone number or any other false information on the Order Form or otherwise enter information intended to conceal the Customer's identity. The Customer further acknowledges that it is its responsibility to notify Delphi Creative of any changes to its details and to ensure that those details provided are kept up to date.

3.2 In the event of any breach of the provisions of clause 3.1 by the Customer, Delphi Creative reserves the right forthwith to withdraw, suspend or cancel the Services.

3.3 The Customer acknowledges that it is solely responsible for maintaining adequate insurance cover in respect of any loss or damage relating to the provision of the Services.

3.4 The Customer acknowledges that the internet is not a completely secure medium of communication, and, whilst Delphi Creative has taken steps to safeguard the security of some information (i.e payment details) the Customer inputs on the Website or sends to Delphi Creative on the internet by using secure servers and Secure Sockets Layer ("SSL") technology which encrypts the information the Customer inputs on its system before it is transmitted to Delphi Creative, Delphi Creative is not and will not be responsible for any damages the Customer may suffer as a result of the loss of confidentiality of such information.

3.5 The Customer acknowledges that it is solely responsible for complying with all applicable data protection legislation regarding data stored or transmitted when using the TouchTools Content Management System and in relation to the provision of the Services.

4 Obligations of Delphi Creative

4.1 In the event that the Customer submits any Order or uses any or all of the Services in such a way as may in Delphi Creative's opinion expose Delphi Creative to the risk of legal or other proceedings or expose Delphi Creative to loss or damage of any kind, Delphi Creative reserves the right to refuse to process or continue processing any Order or to withdraw, suspend or cancel the Services or take any other action as it in its absolute discretion it sees fit.

4.2 Delphi Creative will comply with all applicable data protection legislation in relation to the personal details that the Customer provides on the Order Form. All information provided to Delphi Creative will be dealt with in accordance with Delphi Creative's privacy policy which can be found on the Website. The Customer acknowledges that Delphi Creative is under no obligation to edit, review or modify information provided by or on behalf of the Customer. In order to maintain the integrity of the service, Delphi Creative reserves the right to forward contact details to the police, or other regulatory authorities where requested to do so, Delphi Creative may also forward contact details where a complaint arises concerning the Customer's use of the Service and where that use is deemed by Delphi Creative to be inconsistent with these user conditions.

5 Fees

5.1 The Customer shall pay to Delphi Creative the Fees, inclusive of any additional costs incurred by Delphi Creative in processing an Order (subject to clause 5.4).

5.2 The Fees shall be paid by the Customer, as detailed in the Contract, without set off or counterclaim.

5.3 The Customer acknowledges that the provision of the Services is conditional on Delphi Creative receiving payment of the Fees in full and in the event of non payment of Fees or suspected fraudulent activity in relation to payment of Fees by the Customer, Delphi Creative reserves the right forthwith to withhold, suspend or cancel the Services.

5.4 The Customer acknowledges that occasionally unforeseen charges are incurred in processing Orders. Delphi Creative shall obtain the Customer's written consent before incurring such charges.

5.5 Interest will be charged on overdue accounts at a rate of 4 % above the base rate from time to time in force of National Westminster Bank PLC or such other rate as may be published on the Website. Such interest will be calculated on a daily basis from the date payment was due until the date payment is received (including any time following the entry of judgement) and will be compounded monthly.

6 Bulk Discounts

If the Customer places an Order for multiple items where the relevant Fee is advertised on the Website as a discounted Fee and one or more of the items ordered is unavailable then Delphi Creative reserves the right to charge the Customer for the advertised discounted Fee for the number of items actually available.

7 Refunds and Credits

Unless otherwise provided in the Contract the Customer shall not be entitled to any refund of Fees or a credit against any future Order.

8 Indemnity

The Customer shall indemnify Delphi Creative and keep Delphi Creative fully indemnified from and against all liability, claims, costs, losses, loss of profits, expenses, business interruption, and other pecuniary or consequential loss (including reasonable legal costs and expenses) suffered or incurred by Delphi Creative as a result of:-

- (i) access to and/or use of the Services by the Customer;
- (ii) any information, data or material produced, transmitted or downloaded by the Customer;
- (iii) any breach by the Customer of any of the provisions of these Conditions or of any law, code or regulation relating thereto or to the internet.

9 Limitation of Liability

9.1 Delphi Creative warrants to the Customer that the Services will be provided using reasonable care and skill.

9.2 Except as set out expressly in these conditions, Delphi Creative excludes all conditions, terms, warranties and representations (other than fraudulent representations) in relation to the whole or part of the Services whether imposed by statute or operation of law or otherwise including but not limited to implied warranties or conditions of accuracy, completeness, satisfactory quality and fitness for a particular purpose.

9.3 Whilst Delphi Creative makes no attempt in the Contract to limit its liability for death or personal injury arising from its negligence, in no circumstances shall Delphi Creative be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof for:

- 9.3.1 any increased costs or expenses;
- 9.3.2 any loss of profit, business, contracts, revenues, or anticipated savings;
- 9.3.3 the consequences of any failed or unsuccessful domain name, registration;
- 9.3.4 any claims that the domain name registered or requested by the Customer to be registered by Delphi Creative on behalf of the Customer or that any Customer Site or material on a Customer Site infringes the Intellectual Property Rights;
- 9.3.5 the consequences of any errors or interruption in the Services ;
- 9.3.6 any failure of e-mail including without limitation non-receipt and mis-routing; or

9.3.7 any changes in any of Delphi Creative's facilities, operations, procedures, products or Services which render obsolete or require modification of or alteration to the Customer's equipment or software;

9.3.8 any special indirect or consequential damage of any nature whatsoever, arising directly or indirectly out of the provision by Delphi Creative of the Services or the performance by Delphi Creative of the Contract.

9.4 Notwithstanding anything contained in the Contract Delphi Creative's liability to the Customer in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the Fees paid by the Customer for the Services.

9.5 The Customer expressly acknowledges that the provisions of this clause 9 satisfy the requirements of reasonableness specified in the Unfair Contract Terms Act 1977 and that it shall be estopped from claiming to the contrary at any future date in the event of any dispute with Delphi Creative concerning Delphi Creative's liability hereunder.

9.6 Where the Services are performed under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.

10. Suspension and Termination

Without prejudice to any of its other rights, either party shall have the right to immediately terminate the Contract and Delphi Creative may also suspend or restrict the Services to the Customer, if:

10.1 the Customer commits any material or repeated breach of the Contract and/or, fails to remedy any breach which is capable of being remedied within fourteen days of receipt of a notice requiring it to remedy such breach. For the purpose of this clause a breach of clauses 3, 4 or 5 may be deemed a non-remediable breach and Delphi Creative may immediately suspend or restrict the Services without notice to a Customer breaching these clauses. In the case of a suspected breach by the Customer Delphi Creative will take whatever steps it believes necessary to investigate and resolve matters;

10.2 the other is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of affecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of a relevant party under the Contract) or compounds with or convenes a meeting of its creditors or has a Receiver or Manager or an Administrator appointed over its assets or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party terminating means that the other may be unable to pay its debts.

11. Resellers

11.1 If the Customer is acting in the capacity of a reseller of the Services or on behalf of a third party the Customer agrees:-

11.1.1 to ensure that its customers or the third party are bound by the Conditions or terms and conditions no less exhaustive than the Conditions;

11.1.2 to ensure that at all times it acts in accordance with its customers' instructions;

11.1.3 to ensure that it seeks permission from its customers before passing any of their personal details to Delphi Creative;

11.1.4 to provide all appropriate support to its customers including without limitation general customer services, billing and collection of fees and technical support;

11.1.5 to use commercially reasonable efforts to inform its customers when a domain name registration is due for renewal at least thirty (30) days prior to the end of the applicable registration term;

11.1.6 not to incur any liability on the part of Delphi Creative; and

11.1.7 not to make any representation or warranty on behalf of or pledge the credit of or otherwise bind Delphi Creative

11.2 Delphi Creative reserves the right to contract with the Customer's customer directly in relation to the provision of the Services on termination of the Contract with the Customer howsoever arising and/or in the event that Delphi Creative is unable to contact the Customer and/or in the event that Delphi Creative receives a complaint from the Customer's customer providing that the Customer's customer has requested Delphi Creative to contract with them.

12. Proprietary Rights and Intellectual Property Rights

The Customer acknowledges that all title, rights and interest in the Services and TouchTools shall remain with Delphi Creative and/or its suppliers and that the Customer shall not under any circumstances obtain any proprietary rights in respect of the Services.

13. Force Majeure

Neither party shall be in breach of the Contract if there is any total or partial failure of performance by it of its duties and obligations under the Contract occasioned by any act of God, fire, act of Government or State, war, civil commotion, insurrection, embargo, labour disputes of whatever nature and any other reason beyond the control of either party. If either party is unable to perform its duties and obligations under the Contract as a direct result of the effect of one of those reasons, that party shall give written notice to the other of the inability which sets out full details of the reason in question. The operation of the Contract shall be suspended during the period in which the reason continues. Forthwith upon the reason ceasing to exist, the party relying upon it shall give written advice to the other of this fact. If the reason continues for a period which substantially affects the commercial intention of the Contract, the party not claiming relief under this clause 13 shall have the right to terminate the Contract upon giving 7 day's written notice of such termination to the other party.

14. Assignment

The Contract is personal to the Customer and the Customer's rights may not be assigned, sub-licensed or transferred in any way.

15. Severability

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

16. No Waiver

No waiver by Delphi Creative shall be construed as a waiver of any preceding or succeeding breach of any provision.

17. Notices

Any notice or other documents given under the Contract shall be given in writing and in English and shall be deemed to have been duly given on the date of dispatch if hand delivered or sent by first class post, express, airmail, other fast postal service, registered post or telex, facsimile or other electronic media to the last known address of the party to whom the notice is addressed. To prove the giving of notice or other document it shall be sufficient to show that it was dispatched.

18. Governing Law

The validity, construction and performance of the Contract shall be governed by English law and the parties hereby submit to the jurisdiction of the English Courts.

B DOMAIN NAME SERVICES

This Section B together with Section A of the Conditions constitutes the terms of the Domain Name Services provided by Delphi Creative. In addition, Section D of these Conditions contains additional terms relating to the Pre-registration Services for .biz, .info and .name domains.

1. Obligations of the Customer

1.1 The Customer shall not use any domain name registered by Delphi Creative on behalf of the Customer to communicate, reproduce, transmit, store or knowingly receive any material that is offensive, abusive, indecent, defamatory, obscene, menacing or in breach of confidence or which infringes the Intellectual Property Rights of any third party.

1.2 The Customer acknowledges that the registration and use of domain names is subject to the terms and conditions of the Relevant Naming Authority and accordingly agrees to be bound by them. The registration and use of UK domain names is governed by Nominet UK, the registration and use of international domain names (.com, .net, .org, .biz, .info and .name) which are governed by ICANN is performed through Delphi Creative in conjunction with either Internet Names World Wide or Joker (both Accredited Registrars) and the registration and use of .tv domain names are governed by the .tv Corporation. In submitting an Order the Customer will be deemed to have read and understood the terms of the relevant registration agreement, which can be reached via the following links:

<http://www.nominet.org.uk/ReferenceDocuments/TermsAndConditions/TermsAndConditions.html>

<http://www.inwww.com/policies/gtldtermcond.php3>

<ftp://ftp.networksolutions.com/partners/Agreements/vrsn-service-agreement.pdf>

1.3 The Customer hereby authorises Delphi Creative to act as the administrative, technical and billing contact on all Global Domains and to perform all functions associated with these roles. The Customer may act as the administrative contact providing it has submitted a written request to Delphi Creative and where the Customer is acting as the administrative contact it

acknowledges that in relation to its role as administrative contact it is solely responsible for its acts and omissions and the consequences thereof. Delphi Creative does not allow the Customer to act as the technical/billing contact and if the Customer wishes to act as the technical and/or billing contact it will have to transfer the domain away from Delphi Creative who can accept no further responsibility for the domain.

1.3 The “.biz” domain is intended for business use only and in submitting an Order for a “.biz” domain the Customer warrants that the domain will be used for business purposes.

1.4 The “.name” domain is intended for an individual’s personal use only and in submitting an Order for a “.name” domain the Customer warrants that it is either registering its own name or a close variation thereof or that it is registering a fictional name to which it owns the rights.

1.5 The “.me.uk” domain is intended for an individual’s personal use only and in submitting an Order for a “.me.uk” domain the Customer warrants that it is registering a name or a close variation thereof that belongs either to the Customer or to another individual that has authorised the Customer to do so.

1.6 To be eligible to register a “.us” domain the Customer must satisfy eligibility rules laid down in the “Nexus Requirements” as described on the Website.

2. Obligations of Delphi Creative

2.1 Delphi Creative shall use its reasonable endeavours to obtain registration of the domain names requested.

2.2 Delphi Creative does not warrant or guarantee that the domain name requested by the Customer will be registered or be capable of registration and the Customer should take no action in respect of the requested domain name until the Customer has been notified that the requested domain name has been registered.

2.3 The Customer acknowledges that any domain names registered by Delphi Creative on the Customers’ behalf may subsequently be suspended or cancelled by persons other than Delphi Creative.

2.4 If required by the Customer Delphi Creative will host any domain name registered through Delphi Creative on Delphi Creative’s name-servers and provide Web Re-direction and e-mail forwarding services PROVIDED ALWAYS that the domain name is managed by Delphi Creative and Delphi Creative remains the technical and billing contact. The Customer acknowledges that if the domain is transferred to another registrar or management of the domain is transferred to another service provider or if the technical and/or billing contact is changed Delphi Creative will no longer be under any obligation to host the domain and/or provide web re-direction and/or e-mail forwarding.

2.5 If the Customer does not make use of the Web Re-direction service for a domain, it will be re-directed to a holding page or other website. The Customer agrees that Delphi Creative may amend the content of any holding page or change the destination of any re-direction is at its sole discretion. This does not in any way affect the Customer’s right or ability to make use of the Web Re-direction facility as and when the Customer chooses.

3. Cancellation

In entering into a Contract with Delphi Creative for Domain Name Services, the Customer acknowledges that performance of the Contract will begin immediately and that it is hereby forfeiting its right to cancel the Contract under the Regulations.

4. Refunds and Credits

4.1 If the domain name requested by the Customer is unable to be registered the Customer will be entitled to a refund of any Fees paid in relation to an Order or a credit against any future Order.

4.2 Subject to clause 4.1 above the Customer shall not be entitled to any refund of Fees or a credit against any future Order.

5 Transfer of domain names

5.1 Customers are not permitted to transfer domain names for a period of 60 days following completion of the registration of the domain name.

5.2 Delphi Creative reserves the right to refuse to transfer a domain where any monies are due from the Customer to Delphi Creative in respect of that domain name.

5.3 Where the Customer wishes to transfer the ownership of its domain to a third party Delphi Creative will charge an administration charge of £50 for effecting the transfer. Delphi Creative reserves the right to increase this administration fee if Delphi Creative incurs costs in excess of £50 in effecting the transfer and Delphi Creative will notify the Customer of the increased fee as soon as practicable.

5.4 Any domain name not registered through Delphi Creative but subsequently transferred to Delphi Creative is subject to the Conditions.

5.5 In submitting a request for a domain name to be transferred to Delphi Creative the Customer warrants that it is the registrant of the domain name or is authorised to act for and on behalf of the registrant.

5.6 In submitting a request for a domain name to be transferred to Delphi Creative the Customer agrees to pay the fee for the next renewal of the domain at the time of the transfer. If the Customer subsequently transfers the domain away from Delphi Creative before this renewal has been implemented, the renewal fee will be refundable but an administration charge of £35 + vat will be payable by the Customer and deducted from any monies due from Delphi Creative to the Customer.

5.7 In the event of a dispute regarding the ownership of or any rights to a domain name transferred to Delphi Creative, Delphi Creative reserves the right to take any and all necessary action to protect itself including (without limitation) the right to give the registry key for the domain name to the registrant and/or to authorise the transfer of the domain name away from Delphi Creative.

6 Renewal of domain names

6.1 The Customer acknowledges that the Customer has ultimate responsibility for renewing the domain name and the Customer accepts that whether or not Delphi Creative has successfully contacted the Customer pursuant to this clause Delphi Creative cannot be held liable if the Customer fails to renew the domain name before its expiry.

6.2 The renewal of any domain name through Delphi Creative is subject to the Conditions.

6.3 When renewing Global Domains Delphi Creative reserves the right in its sole discretion to change the registrar through which the domain is registered and in requesting the renewal of a domain name the Customer authorises Delphi Creative to make such a change.

6.4 Delphi Creative does not warrant or guarantee that the domain name requested by the Customer will be renewed or be capable of renewal and the Customer should take no action in respect of the requested domain name until the Customer has been notified that the requested domain name has been registered.

6.5 Any domain name not renewed by its expiry date will be de-activated on the expiry date. To avoid loss of service, the Customer should ensure that domains are renewed well in advance of the expiry date. Uninterrupted service cannot be guaranteed.

6.6 Any domain name not renewed 30 days after its expiry date may be deleted. Once a domain has been deleted it cannot be renewed. At this point it will have to be re-registered and there is a risk that it may be registered by another person or company. To avoid loss of a domain name, the Customer should ensure that domains are renewed well in advance of the end of the 30-day grace period following the expiry date. Successful renewal cannot be guaranteed.

C WEB-HOSTING, SECURE HOSTING, SITE SEALS, EMAIL, CO-LOCATION, DEDICATED SERVERS AND BACK-UPS

This Section C together with Section A of the Conditions constitute the terms of the Web-Hosting Services, the Email Services the Co-location Services, Dedicated Server Services and Back-up Services, collectively known as the Hosting Services

1. Licence

In accepting the Customer's application to subscribe to the Hosting Services, Delphi Creative grants the Customer a non-exclusive, non-transferable, royalty free and restricted licence to use the requested services package, as published on the website at the time such services are purchased.

2. Provision of Services

2.1 The facilities and services provided within the Services will be defined by the description of the services applied for by the Customer on the Website at the time of the application, including but not limited to the specification of the storage space and data transfer that will be made be available. If the storage or data transfer limits are exceeded, it will be necessary for the Customer to upgrade the Services or purchase additional storage and/or data transfer as required.

2.2 Whilst Delphi Creative undertakes to use reasonable endeavours to provide the Services promptly following the Customer's application, it is possible that restrictions in the availability of resources may lead to a delay.

2.3 Whilst Delphi Creative undertakes to use reasonable endeavours to maintain an acceptable level of security, it cannot give any guarantee regarding the security of material hosted on the Delphi Creative Server or Customer Server.

2.4 Whilst Delphi Creative undertakes to use reasonable endeavours in the provision of the Services, it does not guarantee that provision of the Services will be error-free or uninterrupted.

2.5 Delphi Creative may from time to time have to suspend the Services for repair, maintenance or improvement and in such circumstances Delphi Creative undertakes to notify the Customer as far in advance as possible and to endeavour to keep the period of suspension to the minimum length of time necessary to carry out such works.

2.6 In light of clauses 2.3, 2.4 and 2.5 above the Customer accepts that the Services are not intended to be used in circumstances where fail-safe performance is required.

2.7 Delphi Creative reserves the right to suspend or modify the Services if the Customer's continued use of the Services is determined, at Delphi Creative's sole discretion, to be detrimental to the running of any Delphi Creative Server or to the use of the Services by any other Customer.

2.8 Delphi Creative reserves the right to terminate the Contract for the provision of Services at any time. If Delphi Creative exercises this right for any reason other than as described elsewhere in these Conditions, Delphi Creative will give 30 days notice of termination and will refund the Fees.

2.9 Delphi Creative reserves the right to monitor the Customer Site, the Delphi Creative Server and the Customer Server and the Customer's use of the Hosting Services and shall be entitled at all times and without notice to refuse to host any material and/or to suspend availability of the Customer Site or other Hosting Services and/or to remove any material which Delphi Creative in its sole discretion believes contravenes any of the warranties in clause 3 below or otherwise harms Delphi Creative.

2.10 Where Delphi Creative proposes to take action pursuant to clause 2.9 above it shall notify the Customer of its action as soon as possible.

2.11 Delphi Creative's rights to suspend availability of the Customer Site or other Hosting Services and/or remove material is without prejudice to the Customer's sole responsibility for the content of the Customer Site or other Hosting Services and to the warranties given by the Customer under clause 3 below.

2.12 The Customer acknowledges that hosting of the Customer Site, the provision of the Customer email account, the co-location of the Customer Server and the rental of a Dedicated Server by Delphi Creative does not amount to Delphi Creative's approval of the Customer Site or material on the site or the Customer's use of email or the Delphi Creative Server or Customer Server and shall not under any circumstances constitute a waiver of any of Delphi Creative's rights or the Customer's obligations under this Agreement.

2.13 On termination of the Contract, howsoever arising, Delphi Creative shall be entitled to immediately stop access to and to remove all material from the Customer Site, Dedicated Server and email account and also to post an appropriate notice regarding the lack of availability of the Customer Site, Dedicated Server and email account

2.14 Unless the Customer has purchased the Back-up Services in connection with the Hosting Services, the Customer shall be solely responsible for making and maintaining its own back-ups of any material on the Customer Site, email account, Delphi Creative Server and Customer Server and acknowledges that Delphi Creative cannot be held responsible for the consequences of any loss of such material.

2.15 In relation to the Co-location Services:

2.15.1 Delphi Creative will, on request, perform a hard re-boot on the Customer Server during normal office hours. Delphi Creative's obligation in this respect will be limited to a maximum of four hard re-boots per calendar month;

2.15.2 On request, the Customer will be granted access to the Customer Server at the Co-location Data Centre. This access will take place during normal office hours and will be granted up to a maximum of four times per calendar month. At least two working days notice should be given when access is required. In an emergency Delphi Creative will endeavour to grant access at shorter notice, but no guarantee of this can be undertaken;

2.15.3 The Customer Server is the property of the Customer and may be removed from the Co-location Data Centre by the Customer. The Customer should give two working days written notice if the Customer Server is to be removed. Once removed, the agreement to provide Co-location Services will be terminated and the Customer will have no further right to this service.

2.16 In relation to the use of email aliases and sub-domains:

2.16.1 If the Customer applies to use an email alias or sub-domain attached to a domain not owned by the Customer, Delphi Creative cannot guarantee that the desired alias or sub-domain will be available;

2.16.2 If the Customer applies to use an email alias or sub-domain attached to a domain not owned by the Customer, Delphi Creative cannot guarantee that the selected domain will continue to be available beyond the initial term of the Email or Hosting Services applied for.

2.17 In relation to the Dedicated Server Services:

2.17.1 Delphi Creative will use commercially reasonable efforts to repair or replace any faulty component in the Delphi Creative Server, but Delphi Creative cannot be held liable for any delays due to factors beyond Delphi Creative's control, including but not limited to delivery delays or non-availability of replacement components;

2.17.2 On request, Delphi Creative will recover the Delphi Creative Server on the Customer's behalf, subject to an annual limit, which is currently set to one such request per year;

2.17.3 Unless the Customer has purchased the Back-up Services in connection with the Hosting Services, a request from the Customer to recover the Delphi Creative will result in the server being restored to its original state and any data, programs or web-sites belonging to the Customer will not be retained;

2.17.4 If the Customer so wishes, Delphi Creative will install upgrades and patches to the Delphi Creative Server from time to time. Only software that has been approved by the manufacturer of the Delphi Creative Server will normally be installed, although Delphi Creative may consider requests for installation of unapproved software at an additional cost, but Delphi Creative cannot be held responsible for the functioning of a server running unapproved software;

2.17.5 In the event of the Customer requesting full root access to the Delphi Creative Server, the Customer accepts full responsibility for all management and maintenance of the server, including but not limited to system monitoring and recovery and installation of all upgrades and patches;

2.18 In relation to the Back-up Services:

2.18.1 Delphi Creative will use reasonable efforts to back up the Customer's data from the Delphi Creative Server or Customer Server as defined by the description of the Back-up services on the Website at the time of the application, but Delphi Creative shall not in any way be responsible or liable for any loss, damage, costs, expenses or other claims for compensation arising from any data, file or material being damaged, corrupted or lost from whatever cause;

2.18.2 If the disk space allocated to the Customer for the Back-up Services is fully utilised, the back-up process will overwrite the oldest data back-up stored at that time, resulting in the loss of the overwritten back-up;

2.18.3 On request, Delphi Creative will restore data from a data back-up to the Delphi Creative Server or Customer server, subject to a monthly limit, which is currently set to one such request per month.

2.19 In relation to the Secure Hosting Services and Site Seals:

2.19.1 Verisign have sole authority over the issuing of Site Seals and Shared Certificates and Delphi Creative cannot be held responsible for any unsuccessful applications, in the event of an application being unsuccessful Delphi Creative will refund any fees paid in connection with that application;

2.19.2 The provision and use of Shared Certificates and Site Seals is governed by additional terms and conditions laid down by Verisign, which can be reached via the following links:

End User Shared Certificate Subscriber Agreement

End User Secure Site Seal Subscriber Agreement

2.19.3 All scripting software including but not limited to CGI and PHP scripts must be submitted to Delphi Creative for approval before being used on the Secure Server, such approval to be granted or denied at Delphi Creative's sole discretion;

2.19.4 Any scripting software that is determined, at Delphi Creative's sole discretion, to be detrimental to the running of the Secure Server or any Delphi Creative Server or to the use of the Services by any other Customer may be removed by Delphi Creative, notwithstanding that it may previously have been approved by Delphi Creative for use on the Secure Server;

2.19.5 Delphi Creative will use reasonable efforts to ensure the security of its Secure Hosting Services, including the use of Secure Socket Layer encryption and firewall technology, but Delphi Creative shall not in any way be responsible or liable for any loss, damage, costs, expenses or other claims for compensation arising from any breach of security from whatever cause.

2.20 The Customer shall be solely responsible for the Customer Site, and the Customer Server (and all material hosted thereon) and all material hosted on the Delphi Creative Server and for ensuring that the Customer Server and Customer Site function satisfactorily. The Customer recognises that the use of the Hosting Services, the Dedicated Server services and the Co-location Services requires an essential knowledge of matters such as, without limitation, system administration and the languages, software and protocols of the Internet.

2.21 If the Customer is paying for Hosting Services on a monthly basis, Delphi Creative reserves the right to suspend the Hosting Services in the event of non-payment. If payment is not made within 1 month of suspension, Delphi Creative may delete

the content of the Customer Site and the Delphi Creative Server and will have no further obligation to the Customer in respect of the Hosting Services.

2.22 If the Services are covered by a Service Level Agreement (SLA), the following conditions apply:

2.22.1 Loss of service caused by events described in clause A13 Force Majeure are excluded and may not be claimed for under the SLA;

2.22.2 Any guarantee relating to server re-boot is subject to the limitation described in 2.15.1 above;

2.22.3 The SLA excludes any server or network unavailability due to scheduled maintenance work for which the Customer has been given advance notification;

2.22.4 Claims under the SLA relating to Dedicated Server Services will be limited to the portion of the fees allocated to the Co-location Services;

2.22.5 If the Customer wishes to make a claim under the SLA, the claim must be made in writing within one month of the incident to which the claim relates.

3 Customer Warranties

The Customer warrants, represents and undertakes:

3.1 that it has the knowledge referred to in clause 2.19. The Customer accepts that it is not the responsibility of Delphi Creative to ensure that the Customer has such knowledge or to provide such knowledge or support or assistance and that any assistance that may be given is offered purely on a goodwill basis

3.2 that it will obtain all necessary licenses and consents in respect of any material posted on the Customer Site, email account, Delphi Creative Server or Customer Server prior to posting such material;

3.3 that any material posted on the Customer Site, Delphi Creative Server or Customer Server or email sent through the Customer email account is not offensive, abusive, indecent, defamatory, obscene, menacing, in breach of confidence, and/or does not infringe the Intellectual Property Rights of any third party or contain a virus or other hostile code or constitute or encourage a criminal offence;

3.4 that it will not transmit any such material from the Customer Site, Delphi Creative Server or the Customer Server nor will it link to any such material from the Customer Site, Delphi Creative Server or the Customer Server;

3.5 that it will not nor will it permit or authorise any other party to use the Delphi Creative Server, the Customer Site or the Customer Server in breach of any law or regulation;

3.6 that it will not nor will it permit or authorise any other party to use the Delphi Creative Server, the Customer Site or the Customer Server in any way which is or may be detrimental to Delphi Creative;

3.7 to abide by any limitations imposed by Delphi Creative and to keep secure any confidential information provided by Delphi Creative including any passwords to use the Hosting Services, the Email Services, Dedicated Server Services or the Co-location Services;

4 Cancellation

4.1 If the Customer is acting as a consumer and not as a business in submitting an Order for any Services, not including Domain Name Services then, pursuant to the Regulations, the Customer may, for a period of seven working days commencing with the day following Delphi Creative's acceptance of the Order, cancel the Contract by giving notice in accordance with clause 18 of Section A of these Conditions and upon cancellation the Customer shall receive a refund of any Fees paid in relation to the Order in question or a credit against any future Order.

4.2 The Customer accepts that any use of the Services by the Customer will amount to a waiver by the Customer of its right to cancel the Contract under clause 4.1 above.

5 Amendment

Delphi Creative may from time to time amend the Conditions and any such amendment will be displayed at least one month prior to the implementation of the amendment. If the Customer is a consumer it may end this Agreement by written notice at any time up to the date on which the amendment comes into force. Should the Customer place an Order or continue to use the Services following implementation of an amendment it will be deemed to have accepted the amendment.

