

**TOTAL WEB SOLUTIONS LIMITED**  
**STANDARD TERMS AND CONDITIONS OF SERVICES**

These terms and conditions ("Terms") apply to all services provided by Total Web Solutions Limited (TWS) and the individual or company applying for the provision of services by TWS ("Customer"). These Terms are applicable only to the provision of services to business customers and the services are for business use only.

**PART A – GENERAL TERMS**

**1 INTERPRETATION**

1.1 In these Terms, the following expressions shall have the following meanings:

"Billing Month"	commences on the Live Date and will run until the corresponding date in the next Month (for example, where the Live Date is 5 <sup>th</sup> April, the Billing Month will run until 4 <sup>th</sup> May inclusive);
"Charges"	the charges charged to the Customer for the provision of the Services calculated either in accordance with TWS's quotation supplied in writing to the Customer or if no such quotation has been supplied, in accordance with the Price List applicable at the time the Customer places an Order;
"Confidential Information"	Trade secrets business and other information which is identified as confidential or proprietary by either party or the nature of which is clearly confidential or proprietary;
"Contract"	the contract for the provision of Services incorporating these Terms;
"Customer Material"	means any Material and any data or other information (including third party Material) provided to TWS by or on behalf of the Customer for use with the Services;
"Customer Website"	a website on the World Wide Web belonging to the Customer;
"Customer"	the business customer with which the Contract is formed (as named on the Order Form or communicated to TWS over the telephone when placing an Order) in accordance with these Terms;

"Inappropriate Material"	Material that under the laws of any jurisdiction where the Material can be accessed is any of the following: unlawful, threatening, abusive, harmful, malicious, obscene, pornographic, profane, libellous, defamatory, infringes any Intellectual Property Rights, constitutes or encourages a criminal offence or contains a virus, worm, Trojan horse or other harmful code;
"Initial Period"	the initial duration of each Service, being either 12 months or 1 month, as stated on the Order Form or as otherwise notified to the Customer in writing by TWS;
"Intellectual Property Rights"	copyrights, patents, registered and unregistered design rights, topography rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world;
"Live Date"	the date on which TWS commences provision of the Services to the Customer;
"Material"	includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, text, graphics, sound, video or any other record of any information in any form;
"Month"	a calendar month;
"Order Form"	The form (whether electronic or paper-based) on which the Customer selects the Services to which it wishes to subscribe, incorporating these Terms;
"Order"	an order for the Services placed by the Customer (using an Order Form or over the telephone or otherwise, in accordance with TWS's quotation) subject to these Terms;
"Price List"	a list of TWS's prices current at that date for each of the Services as available on TWS's Website or from TWS by post or fax on request and incorporating these Terms;
"Relevant Legislation"	laws relating to General Data Protection Legislation and any laws governing Inappropriate Material;
"Renewal Date"	the first or any subsequent anniversary of the Live Date;

"Renewal Period"	In relation to Services with an Initial Period of 12 Months, a period of 12 Months commencing on an anniversary of the Live Date;
"Server"	any computer server equipment operated by TWS in connection with the provision of the Services;
"Services"	the services identified on any quotation, Order Form or otherwise agreed to be provided by TWS to the Customer pursuant to these Terms;
"TWS"	Total Web Solutions registered in England under number 3120571, whose registered office is at 12 Riverview, The Embankment Business Park, Heaton Mersey, Stockport, Cheshire. SK4 3GN;
"TWS's Website"	TWS businesses' main Company website located at <a href="http://www.totalwebsolutions.com">http://www.totalwebsolutions.com</a> or such other Internet Protocol address as may be adopted by TWS from time to time;
"User Details"	the Customer's login name and password and any other access details for use with the Services;
"WHOIS"	any WHOIS service available on the Internet and provided by a Domain name registry for the purpose of checking Domain name availability and information; and
"writing"	references to "writing", "written" and cognate expressions shall include facsimile transmissions and Material transmitted in electronic form.

## 1.2 In these Terms:

- 1.2.1 the headings are for convenience only and shall not affect their interpretation;
- 1.2.2 references to clauses, Parts and Sections, unless otherwise provided, are references to clauses, Parts and Sections, of these Terms and references to any schedules unless otherwise provided, are references to schedules to the Contract;
- 1.2.3 the single includes the plural and vice versa and a reference to one gender includes the other gender;
- 1.2.4 except where the context requires otherwise the singular includes the plural and vice versa; a reference to one gender includes a reference to

- the other gender; words denoting persons include firms and corporations and vice versa;
- 1.2.5 the words “include” or “including” shall be construed without limitation to the words following;
- 1.2.6 a reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, re-enacted or extended at the relevant time; and includes any subordinate legislation for the time being in force made under it.
- 1.3 Part A of these Terms shall apply to all Services provided to the Customer. In addition to Part A, Part B of these Terms shall apply to the extent that the specific Services described in Part B are supplied to the Customer. In case of conflict between the provisions of Part A and Part B of these Terms, the provisions of Part B shall apply.

## 2 **BASIS OF SUPPLY**

- 2.1 TWS shall provide the Services in accordance with the Order, subject in all cases to these Terms, which shall govern the Contract to the exclusion of any other conditions subject to which any such Order Form or quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.
- 2.2 No variation to these Terms shall be binding unless agreed in writing by TWS.
- 2.3 TWS’s employees or agents are not authorised to make any representations concerning the Services unless confirmed by TWS in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations, which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.4 Any advice or recommendation given by TWS or its employees or agents to the Customer or its employees or agents as to the application or use of the Services which is not confirmed in writing by TWS is followed or acted upon entirely at the Customer’s own risk, and accordingly TWS shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission on TWS’s Website or in any sales literature, Order Form, quotation, price list, acceptance of offer, invoice or other

document or information issued by TWS shall be subject to correction without any liability on the part of TWS.

### **3 ORDERS AND SPECIFICATIONS**

- 3.1 No Order submitted by the Customer shall be deemed to be accepted by TWS unless and until confirmed in writing (usually by invoice and covering letter acknowledging and accepting the Order) by TWS's authorised representative.
- 3.2 The Customer shall be responsible to TWS for ensuring the accuracy of the conditions of any Order (including any applicable specification) submitted by the Customer, and for giving TWS any necessary information relating to the Services within a sufficient time to enable TWS to perform the Contract in accordance with its conditions.
- 3.3 The Services and any specification for them shall be as set out in the Order (if accepted by TWS) or otherwise in accordance with TWS's current website, brochure or other published literature relating to the Services from time to time, subject always to these Terms.
- 3.4 TWS reserves the right to make any changes to the Services, which are required to conform with any applicable statutory or E.U. requirements or which do not materially affect the nature or quality of the Services.
- 3.5 No Order which has been accepted by TWS may be cancelled by the Customer except with the agreement in writing of TWS and on conditions that the Customer shall indemnify TWS in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by TWS as a result of such cancellation.

### **4 CHARGES & PAYMENT**

- 4.1 Unless otherwise agreed in the writing the Charges and any other sums payable under the Contract (including any additional sums which are agreed between TWS and the Customer for the provision of the Services or which, in TWS's sole discretion, are required as a result of the Customer's instructions or lack of instructions or any other cause attributable to the Customer) shall be paid by the Customer (together with any applicable Value Added Tax and without set-off or deduction) within 14 days of each invoice.

- 4.2 All Charges quoted to the Customer are exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the applicable rate from time to time.
- 4.3 TWS accepts most methods of payment, including, most major credit and debit cards, direct debit, cheque, BACS transfer.
- 4.4 Unless otherwise specified by TWS in writing, the Customer shall pay the Charges either annually in advance for Services which are subject to a 12 month Initial Period or monthly in advance for Services which are subject to a one (1) month Initial Period. Payment of the Charges in advance is a pre-condition to receipt of the Services.
- 4.5 Services will not commence until TWS have received the first payment for the Services ordered. TWS reserves the right to suspend or terminate the provision of Services if Charges are not received by TWS in accordance with payment times for each of the Services as communicated by TWS to the Customer.
- 4.6 Any third party costs (including but not limited to court costs) which TWS may incur in respect of processing the payment for the Services on behalf of the Customer (for example, in respect of cheques which are refused for insufficient funds, or bank payments where TWS incurs a charge) shall be paid by the Customer within 7 days of being so notified in writing by TWS.
- 4.7 Time for payment shall be of the essence and no payment shall be deemed to have been made until TWS has received a cheque, successfully processed the customers credit card or received wired funds directly into a TWS bank account.
- 4.8 If the Customer disputes the amount of any invoice it must notify TWS in writing within 7 days of receiving such invoice. The Customer shall pay the undisputed part of any such invoice with the balance, if any, to be paid following resolution of the dispute.
- 4.9 If any sum payable under the Contract is not paid within 14 days of the due date then (without prejudice to TWS's other rights and remedies):
- 4.9.1 TWS may charge interest on a daily basis on the overdue amount and on outstanding interest from the date of such failure until payment (both before and after judgment) at the rate of 4% above the base rate for the time being in force of Barclays Bank plc. TWS reserves the right to claim

interest under the Late Payment of Commercial Debts (Interest) Act 1998;  
and/or

- 4.9.2 terminate or suspend without liability and without prior notice the Contract and/or the Services to which the late payment relates forthwith in accordance with clause 11.
- 4.10 Non-delivery or non-performance of services by any third party other than TWS's sub-contractors shall not give the Customer any right to delay any payment to TWS or to make any claim whatsoever against TWS.
- 4.11 TWS may at any time and from time to time by not less than 28 days notice in writing to its Customers vary the Charges for any Services supplied by it. Within 7 days of receiving such notice the Customer may notify TWS in writing that it wishes to terminate the Services affected by the proposed increase with effect from the date of any proposed change to the Charges and TWS may then choose to alter the Charges, withdraw the notice, or accept the Customer's notice of termination.

## 5 **TITLE IN PROPERTY**

- 5.1 Ownership in any equipment (such as a modem) which TWS may supply to the Customer as part of the Services remains the property of TWS unless the Customer has paid TWS in full for any such equipment and all other sums which are or which become due to TWS from the Customer on any account.
- 5.2 Where the Customer's right to possession has terminated the Customer grants TWS, its agents and employees an irrevocable licence at any time to enter any premises where such equipment supplied by TWS is or may be stored in order to recover them.

## 6 **TERM AND RENEWAL**

- 6.1 The Contract shall commence on the date of written acknowledgment by TWS of the first Order for Services placed by the Customer and unless otherwise terminated in accordance with the terms of the Contract shall continue until the expiry or termination of the last of the Services.
- 6.2 Each of the Services shall commence on the Live Date for that Service as agreed in writing by TWS and the Customer and unless otherwise stated in writing in the Contract or terminated in accordance with these Terms the Contract shall continue

for the Initial Period for that Service and thereafter for so long as the Charges are paid by the Customer:

- 6.2.1 for Services which are subject to an Initial Period of twelve Months, for further Renewal Periods unless and until TWS receives notice in writing from the Customer to terminate that Service prior to the Renewal Date, such notice to take effect from the first day of the next Renewal Date; or
  - 6.2.2 for Services which are subject to an Initial Period of one Month, for further periods of one Month, unless and until TWS receives 30 days notice in writing from the Customer to terminate that Service, such notice to take effect from the first day of the next Billing Month following the expiry of the 30 days notice.
- 6.3 The Customer grants TWS permission to charge any sums due under the Contract at a Renewal Date and/or at the beginning of a Billing Month for all Services which have not been terminated pursuant to clause 6.2 above to any debit card, credit card or bank accounts of which TWS has been informed pursuant to the Order. Where debit card, credit card or bank account information has not been provided TWS shall invoice the Customer for the renewed Services and payment shall be due within 14 days of the date of such invoice (as stated above). TWS shall not be required to provide any renewed Services until payment for the same has been received in full.

## **7 CUSTOMER AUTHORISATION, OBLIGATIONS & UNDERTAKINGS**

- 7.1 The Customer hereby appoints TWS to act on its behalf in conjunction with the provision of the Services.
- 7.2 The Customer acknowledges and accepts that to enable TWS properly to provide the Services it must co-operate with TWS as required by TWS and shall take account of and comply with all reasonable directions of TWS in relation to its use of the Services. In particular:-
  - 7.2.1 the Customer must provide TWS with accurate details of its trading name, e-mail and physical addresses, contact telephone numbers (including a valid landline number) and fax numbers and the Customer shall promptly notify TWS in writing of any alterations to such information from time to time. The Customer shall be solely responsible for the accuracy and keeping up-to-date of all information and Materials which it provides to TWS;



- 7.2.2 the Customer shall at its own expense supply TWS with all necessary Customer Material, and all necessary data or other information relating to the Services, within sufficient time to enable TWS to provide the Services in accordance with these Terms. The Customer shall ensure the accuracy of all Customer Material;
- 7.2.3 the Customer shall observe authentication processes or security relating to the use of the Services and keep all User Details confidential and restricted to those members of its staff who need to know such details and shall ensure all such staff are aware of the confidential nature of the User Details and treat it accordingly. The Customer shall be responsible for any use of the Services made through the Customer's User Details. The Customer shall notify TWS without delay if it believes its User Details have been compromised;
- 7.2.4 the Customer must obtain the consent of individuals whose personal data are to be held on a domain name register or are otherwise provided to TWS and otherwise comply fully with the provisions of the General Data Protection Legislation in respect of such data; and
- 7.2.5 where the Customer is offering goods or services through any Website hosted by TWS as part of the Services, the Customer undertakes to comply fully with the requirements of the Distance Selling Directive and any other applicable consumer laws in relation to such Website and, in particular but without prejudice to the foregoing, undertakes not to accept payment by debit or credit card for such goods or services except via such secure payment system as may be approved by TWS in advance in writing or storing or processing credit card information on any server offered by TWS as part of the Services and otherwise on the terms of Section 4 ("e-commerce") below.
- 7.3 The Customer shall at its own expense retain duplicate copies of all Customer Material and insure against its accidental loss or damage. TWS shall have no liability for any such loss or damage, however caused.
- 7.4 The Customer shall ensure that it has suitable computer and communications equipment to utilise the Services from time to time. The Customer agrees to comply with any minimum requirements made available to the Customer in writing by TWS's from time to time.

- 7.5 The Customer agrees to use the Services for lawful business purposes only and to comply with Relevant Legislation and all other laws and regulations applicable to its use of the Services. It is a condition of the Contract the Customer shall not (and shall ensure that others under its control will not) directly or indirectly:
- 7.5.1 use the Services in a manner which infringes the Intellectual Property Rights, proprietary or personal rights of any third party;
  - 7.5.2 use the Services to knowingly or recklessly receive, access, post, transmit, offer for sale or link to any Inappropriate Material or to promote illegal or unlawful activity, or be otherwise actionable or in violation of any rules;
  - 7.5.3 avoid any authentication processes or security of the Services or interfere with the use of the Services by other customers of TWS;
  - 7.5.4 impersonate any person, or entity or misrepresent its affiliation with anyone or entity;
  - 7.5.5 use the Services to gain unauthorised access to other computer systems or interfere with services to other host providers, networks or websites;
  - 7.5.6 access or attempt to access parts of the Services that it is not authorised to access or collect or store Material belonging to other customers;
  - 7.5.7 otherwise use the Services so as to bring TWS or its services into disrepute;
  - 7.5.8 do anything which may result in the reduced performance of TWS's Server, network or services to the detriment of TWS, other customers of TWS or any other third party, including, without limitation, sending unsolicited or spam e-mails, partaking in file sharing, or doing anything which may result in excess network traffic; and/or
  - 7.5.9 commit any act whereby access is gained by the Customer to any information or resources of any body corporate or person, individual, partnership, government agency, national institution, charity or recognised organisation without first having obtained authority from those persons or institutions.
- 7.6 The Customer warrants in relation to all Customer Material that it has either: a) sole ownership of all Intellectual Property Rights in the Customer Material; or b) has obtained all necessary consents, approvals and licences for the use of Customer Material in connection with the Services and the use of such Customer Material will not infringe any Intellectual Property Rights belonging to any third party.

- 7.7 In the event of allegations of a breach of clauses 7.2.1, 7.2.3, 7.2.4, 7.2.5, 7.5 and/or 7.6 above, or if TWS reasonably suspects such a breach has occurred, TWS may, without giving notice to the Customer and without liability, suspend availability of the whole or part of the Services or the Customer's Website over the Internet (if hosted by TWS in accordance with Section 2 ("Website Hosting") below) or remove the Customer's Website or any part of it from TWS's computer system, pending clarification of such allegations or suspicion.
- 7.8 The parties shall notify each other as soon as reasonably possible after becoming aware of any third party allegation of a breach of the provisions of clause 7.5 and/or clause 7.6 above.
- 7.9 The Customer acknowledges that TWS may monitor and record its use of the Services.
- 7.10 The Customer acknowledges that TWS does not operate or exercise control over, and accepts no responsibility for the content of the Customer Website or the Customer's Materials received by TWS or transmitted using the Services.

## **8 INTELLECTUAL PROPERTY**

- 8.1 The content of the TWS Website provided to the Customer by TWS is protected by Intellectual Property Rights. The Customer may retrieve and display the content of the TWS Website on a computer screen but may not otherwise reproduce, modify, copy or distribute or use for commercial purposes any of the Materials or content on the TWS Website without TWS's prior written permission.
- 8.2 No licence is granted to the Customer in these Terms to use any trade mark of TWS.
- 8.3 The Intellectual Property Rights in the Customer Materials shall remain with the Customer (or relevant third party as appropriate) but TWS shall be granted a non-exclusive licence to use the Customer Materials for the purposes of providing the Services in accordance with the Contract.

## **9 CUSTOMER INDEMNITY**

- 9.1 The Customer hereby agrees fully to indemnify, keep indemnified and hold harmless TWS, its officers, employees, agents, sub-contractors and affiliated companies from and against any and all costs, claims, losses, damages and expenses (including, but not limited to, legal Charges) sustained or incurred by TWS or any of its officers,

employees, agents, sub-contractors or affiliated companies directly or indirectly and in any jurisdiction as a result of:

- 9.1.1 any breach of any of the warranties given by the Customer in the Contract;  
or
  - 9.1.2 the Customer or any party for whom it is legally liable's negligence, wilful default, or breach of any of its obligations in the Contract.
- 9.2 The Customer agrees to pay on an indemnity basis all costs and disbursements incurred by TWS in relation to any action brought by TWS to enforce the provisions of the Contract whatever the value of the claim.

## 10 **TWS WARRANTIES AND LIABILITY**

- 10.1 TWS makes no warranties or representations that any Service will be uninterrupted or error-free. TWS will use all reasonable endeavours to correct any material defect or interruption in the Services and to maintain the availability of the Services during the service periods stated to the Customer, but save as aforementioned the Customer accepts all Services provided hereunder "as is" without warranty of any kind.
- 10.2 All implied conditions, warranties and terms (whether express or implied by statute, common law, custom or otherwise) including, but not limited to, those relating to the exercise of reasonable care and skill, fitness for purpose and satisfactory quality (where applicable) are hereby excluded in relation to each of the Services to be provided hereunder to the fullest extent permitted by law.
- 10.3 TWS shall not be liable for any services or products to be supplied by any third party.
- 10.4 TWS shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.
- 10.5 TWS shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any breach of the Contract by the Customer or any act, misrepresentation, error or omission made by or on behalf of the Customer.

- 10.6 TWS shall not in any circumstances be liable for loss of or damage to data, and the Customer agrees to take back-ups in accordance with best computing practice and retain full copies of all of the Customer's data and Material (including copies of any Website) given to TWS for the performance of the Services.
- 10.7 TWS will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatsoever and howsoever arising (whether out of the provision of the Services or failure to provide the Services or otherwise), loss of production, loss of or corruption to data, loss of profits, revenue or contracts, loss of operation time, loss of goodwill or anticipated savings or any liability of the Customer to a third party, even if TWS has been advised of the possibility of such loss. Subject to clause 10.9 below, TWS's maximum aggregate liability to the Customer under or in connection with the Contract in respect of any direct loss (or any other loss) to the extent that such loss is not excluded by this clause 10, whether such claim arises in contract or in tort shall not exceed a sum equal to twice the Charges received by TWS relating to the Services pursuant to which such claim arises.
- 10.8 Nothing in these Terms shall apply so as to exclude or restrict liability for death or personal injury resulting from the negligence of TWS, its employees or its sub-contractors.
- 10.9 TWS shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of TWS's obligations in relation to the Services, if the delay or failure was due to any cause beyond TWS's reasonable control.

## 11 **TERMINATION**

- 11.1 If either party commits any material breach of these Terms (including a breach by the Customer of clause 7.5) and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, the other party may terminate the Service or Services in respect of which any breach is considered by that party to have been committed or all Services and the Contract on written notice.
- 11.2 TWS may terminate the Contract by notice in writing to the Customer having immediate effect if:
- 11.2.1 the Customer is a company and a resolution is passed for its winding up or a petition for its liquidation is presented; or

- 11.2.2 the Customer is an individual and a petition for bankruptcy is presented against it;
  - 11.2.3 a receiver or liquidator (where the Customer is a company) or (where the Customer is an individual) a trustee in bankruptcy is appointed over it or any of its assets;
  - 11.2.4 the Customer proposes or enters into any arrangement or composition with or for its creditors (including any voluntary arrangement); or
  - 11.2.5 the Customer ceases, or threatens to cease, to carry on its business.
- 11.3 In the event that any of the circumstances identified in clause 11.2 arises, TWS shall have the option to terminate the Service or Services in respect of which any breach is considered by TWS to have been committed or all Services and the Contract; and
- 11.4 In the event that any of the circumstances identified in Clauses 11.1 or 11.2 arises, TWS shall be entitled to retain any sums paid to it by the Customer hereunder and recover any sums due to it pursuant hereto whether invoiced or not at the date of termination.
- 11.5 TWS may terminate the Contract or any of the Services or part of any Services on 12 months' written notice to the Customer.
- 11.6 Any termination of the Contract for any reason shall be without prejudice to any other rights or remedies a party may be entitled to at law or under the Contract and shall not affect any accrued rights or liabilities of either party.
- 11.7 Upon termination or expiry of the Contract or any or all of the Services for whatever reason:
- 11.7.1 TWS will be under no obligation to retain any of the Customer's data and Material held on TWS's computer and will disable access to any Website and/or network through which the Customer received the terminated Services;
  - 11.7.2 the Customer shall not directly or indirectly attempt to access the Services which have terminated or expired; and
  - 11.7.3 all provisions of the Contract which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter.

- 11.8 If TWS terminates the Contract pursuant to clause 11.1 or 11.2 TWS may accept or decline any requests for supply of the Services in the future by that Customer, but if it accepts the same the Customer will be required to make payment of TWS's outstanding charges under the Contract in addition to TWS's standard reconnection charge applicable at the time of reconnection and TWS shall not be obliged to carry out the reconnection until all such amounts, together with payment for future Services have been paid in full.

## 12 **CONFIDENTIALITY**

- 12.1 Each of the parties agrees (subject to clauses 12.2 and 12.3) not to:

- 12.1.1 disclose any Confidential Information received from the other party; or
- 12.1.2 make any use of any such Confidential Information other than for the purposes of performance of the Contract.

- 12.2 Each party may disclose Confidential Information received from the other to its responsible employees, consultants, sub-contractors, suppliers or legal advisors who need to receive the information in the course of performance of the Contract or as required by law.

- 12.3 The confidentiality obligations under clause 12.1 shall not apply to any information which:

- 12.3.1 is or subsequently becomes available to the general public other than through a breach by the receiving party; or
- 12.3.2 is already known to the receiving party before disclosure by the disclosing party;
- 12.3.3 is developed through the independent efforts of the receiving party;
- 12.3.4 the receiving party rightfully receives from a third party without restriction as to use; or
- 12.3.5 is required by a competent judicial or administrative body.

## 13 **GENERAL**

- 13.1 These Terms (together with any terms contained in an Order Form which have been accepted by TWS in accordance with clause 3.1 and any other document expressly incorporated in the Contract) constitute the entire Contract between the parties, supersede any previous Contract or understanding and may not be varied except in

writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

- 13.2 A notice required or permitted to be given by either party to the other under these Terms shall be in writing and may be served personally or by first class prepaid recorded delivery or registered post or by facsimile transmission to the addressee at the following address:
- 13.2.1 To TWS: at the postal address or fax number shown on TWS's Website or an alternative address which TWS may give to the Customer.
- 13.2.2 To the Customer: at the postal address or fax number specified by the Customer when ordering the Services or an alternative address or fax number which the Customer may give to TWS in writing.
- 13.3 A notice shall be deemed to have been served, if by personal delivery when delivered, if by first class prepaid recorded delivery or registered post 2 clear business days after having posted to the correct addressee and pre-paid or if sent by facsimile transmission to the correct fax number of the recipient as may at the relevant time have been notified in writing by the recipient, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next business day provided (in each case) that a confirmatory copy is sent by first class prepaid post or by hand by the end of the next business day.
- 13.4 As an alternative to clause 13.2 and 13.3, where a secure extranet facility is made available to the Customer by TWS (for the purpose of this clause, "Extranet") and the Customer's access to the Extranet has been authenticated by TWS, the Customer and/or TWS may give a notice under these Terms to the other using the Extranet and such notice shall be deemed to have been served, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next business day.
- 13.5 Subject to clause 4.11, TWS may at its sole discretion, change or modify these Terms upon giving the Customer 28 days' written notice of the same. Within 7 days of receiving such notice the Customer may notify TWS in writing that it wishes to terminate the Contract with effect from the date of any proposed change to the Terms and TWS may then choose to alter the Terms; withdraw the notice; or accept the Customer's notice of termination.



- 13.6 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 13.7 The rights and obligations of the Customer under the Contract are personal to the Customer and the Customer undertakes that it shall not, without the prior written consent of TWS, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.
- 13.8 TWS reserves the right to sub-contract any of the work required to fulfil its obligations hereunder to a third party and/or to assign or transfer the Contract or part thereof to a third party.
- 13.9 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.
- 13.10 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.11 A person who is not party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract and the provisions of that Act are hereby expressly excluded.

The Contract and the rights and obligations of the parties shall be governed by and construed in accordance with English law.

#### 14 **DATA PROTECTION**

14.1 TWS undertakes to the Customer that it will:

14.1.1 seek appropriate registration under the General Data Protection Legislation and that it will only process data pursuant to that Legislation;

14.1.2 obtain and process information in accordance with its Privacy Policy which is available on the TWS's Website;

14.1.3 periodically audit its data foot print to ensure it continues to meet the General Data Protection Legislation;

14.1.4 continue to evolve its system to protect personal data from a Data Breach;

14.1.5 train its staff in Data Protection principals and continue to evolve its processes to facilitate this.

14.2 The Customer undertakes to TWS that it will:

14.2.1 seek appropriate registration under the General Data Protection Legislation and that it will only process data pursuant to that Legislation;

14.2.2 take all steps necessary to ensure all transactions undertaken as part of EcomMerchant are dealt-with with the utmost privacy and all information in relation thereto is treated as Confidential Information;

14.2.3 and the Customer indemnifies TWS in respect of any breach of its responsibilities under this clause.

## **PART B - SPECIFIC TERMS**

### **SECTION 1 – DOMAIN NAME REGISTRATION**

1 Together with the General Terms, this Section 1 applies to the provision of Domain Name Registration Services by TWS.

2 The Customer recognises and accepts that:

2.1 TWS reserves the right to reject any request by the Customer to register any particular domain name or to discontinue processing such a request if TWS considers such application might expose TWS to legal or other proceedings including arbitration or regulatory proceedings on the part of any assigned names authority.

2.2 Subject to clause 3, the extent of TWS's service in relation to the registration of domain names is:

2.2.1 to forward the Customer's application to the appropriate Registry;

2.2.2 to provide administrative support in progressing the registration;

- 2.2.3 in the event of registration, to notify the Customer of the renewal date for such registration.
- 2.3 Subject to using its reasonable endeavours to contact the Customer when billed for the renewal of any Customer domain name by the domain name registry to pass such bill to the Customer at the e-mail address most recently provided by the Customer TWS will have no involvement in, or responsibility for the Customer's use or retention of a domain name once registered and it shall be the sole decision of the Customer whether or not to renew such registration.
- 2.4 For the avoidance of doubt and in addition to the provisions of clause 10 of Part A, in no circumstances will TWS be liable to the Customer for any loss of profit, business or anticipated savings suffered by the Customer on account of a failure to obtain or loss of a domain name.
- 2.5 TWS makes no warranty or representation of any kind in relation to the likelihood or otherwise of a particular domain name application being successful because domain name registries retain the right at their discretion to register or refuse to register a domain name applied for by TWS on behalf of the Customer.
- 2.6 The Customer's use of the domain name once registered may be challenged by a third party; if so, or if any other dispute arises the procedures laid down by the relevant registry will apply and these may include the suspension or revocation of a Customer's application for a domain name or the registration of a domain name allocated to the Customer and TWS will have no responsibility or involvement in relation thereto.
- 2.7 It is the Customer's responsibility to pay any and all renewal charges in respect of each domain name registered by TWS on the Customer's behalf.
- 2.8 Domain names are registered on a first come, first served basis.
- 2.9 The registration of a domain name does not confer any legal rights to a name or its use and any disputes between the Customer and a third party are to be settled using normal legal methods or appropriate arbitrations under any assigned name authority. TWS will not be drawn into any such argument or dispute in any circumstances.
- 2.10 An application for the registration of a domain name cannot be treated as having been successful until the Customer is shown as the holder of that registration in the

applicable WHOIS database save where privacy settings dictate this is not possible then confirmation in writing must be sought from TWS.

- 2.11 A request to transfer a Domain away from Total Web Solutions may result in you having to complete a Domain Transfer Request Form and pay a fee to cover administrative costs in authorising and managing the transfer of the domain. The cost of this administration fee will be detailed in our price list available on our web site.
- 3 The Customer warrants to TWS that:-
- 3.1 all information provided by the Customer to TWS in respect of any domain name application is true and correct, and that any additions or alterations thereto in the future will also be true and correct;
  - 3.2 it has the legal right to apply for and use the domain name(s) requested as a Website address; and
  - 3.3 the domain name(s) and its use as a Website address does not and will not infringe the Intellectual Property Rights or any other rights of a third party.
- 4 The Customer acknowledges that the application process, registration and subsequent use of any domain name will be subject to the rules and policies from time to time of the relevant registry and the Customer agrees to abide by all such rules and policies. Accordingly, the Customer undertakes to obtain and read those rules and policies before applying for a domain name.
- 5 If the Customer's application for a particular domain name is rejected, TWS will return to the Customer any payments received in respect of that application but TWS shall not be required to do so if the rejection is caused or contributed to by any breach of clause 3 of this Part B or if in TWS' reasonable opinion it arises by reason of the failure of the Customer to follow any advice given to it by TWS.

## **SECTION 2 – WEBSITE HOSTING**

- 6 Together with the General Terms, this Section 2 applies to the provision of Web Hosting Services by TWS.
- 7 The Customer grants to TWS, for the duration of the Contract, a non-exclusive, non-transferable licence to host the Customer Website in accordance with the provisions of the Contract, solely for the purposes of providing the Services and availability of the Website over the Internet.

- 8 The Customer shall be primarily responsible for publishing and updating the Customer Website, where, exceptionally and as part of a technical service request initiated by the Customer and accepted by TWS, TWS agrees to update the Customer website. The Customer will provide all Customer Material which the Customer wishes TWS to post on the Customer Website in a condition which shall be "server-ready" and which requires no additional manipulation on the part of TWS. TWS shall be under no obligation to validate such Customer Material for content, correctness, legality or usability and the Customer shall retain its own copies of all such Customer Material.
- 9 The Customer recognises that using TWS's Website Hosting Services requires a certain level of knowledge on the Customer's part in the use of Internet languages, protocols and software. The following examples are offered:
- Web Publishing: requires a knowledge of HTML, properly locating and linking documents, FTPing Web contents, graphics, sound, text, imagemapping etc
  - CGI scripts: requires a knowledge of the UNIX environment, Telnet, Vi, Perl, C Shell, permissions etc
- 10 The Customer warrants that it has the necessary knowledge referred to in clause 9 above and acknowledges that it is not the responsibility of TWS to provide such knowledge or to provide customer support unless otherwise agreed in writing with TWS.
- 11 The Customer acknowledges and accepts that it bears sole responsibility, legal and otherwise, for the content of all Customer Material appearing on its Website and for its compliance with relevant legislation. For the avoidance of doubt, this clause shall apply to all Material, whether posted on the Customer's Website by or on behalf of the Customer (whether by TWS or a third party).
- 12 The Customer warrants, represents and undertakes in relation to all Customer Material (including any Material which it requests TWS to post on the Customer Website) that:
- 12.1 it is not Inappropriate Material;
- 12.2 the Customer either has sole ownership of all Intellectual Property Rights in the Customer Material in each jurisdiction from which the Website may be accessed and/or has obtained full and effective licence(s) from all relevant

third parties allowing the Customer or a third party acting on behalf of the Customer to use the Material and to permit its dissemination worldwide;

- 13 The Customer undertakes not to link to any Inappropriate Material from the Customer Website and, where it becomes aware of any link between the Website and any Inappropriate Material agrees to sever that link forthwith.
- 14 In addition to clause 7.7 of Part A above, TWS shall retain the right at all times to refuse to post any Material and to suspend availability of the Customer Website, place a prominent notice on the Customer Website where an allegation of defamation or Intellectual Property Right infringement is made by a third party or place a link on the Website to another Website containing the alleged's version of events and/or to remove any Material already appearing on the Website which in the opinion of TWS may under the laws of any jurisdiction from which it is possible to access the relevant Website:
  - 14.1 constitutes or would if posted constitute Inappropriate Material;
  - 14.2 breaches or would if posted breach Relevant Legislation or any other applicable regulations, standards or codes of practice (notwithstanding that compliance may not be compulsory); and/or
  - 14.3 harms or would if posted harm the reputation of TWS in any way.
- 15 TWS's rights to suspend availability of the Customer's Website and/or remove content under clause 14 of Part B above shall be without prejudice to the Customer's sole responsibility for content of the Website under clause 11 of Part B and to the warranties given by the Customer relating to that content in clause 12 of Part B. The Customer agrees to co-operate with TWS in relation to the investigation of any allegations falling within the scope of clause 14 of Part B above.
- 16 Posting of Material by TWS on the Customer Website shall not under any circumstances constitute a waiver of any of its rights in relation to such Material or of its rights in relation to any breach of the Customer's obligations under the Contract.
- 17 The Customer undertakes fully to virus-check all data and Material supplied to TWS pursuant to the Contract.
- 18 The Customer undertakes not to embark on any course of action, whether by use of the Customer Website or any other means, which may cause a disproportionate

level of Website activity without providing at least seven day's prior notice in writing to TWS.

- 19 In the event that the Customer, whether by breach of clause 11 of Part B above or otherwise, uses substantially more Server resources than the average used by them over the previous month or otherwise makes use of the Services which in the reasonable opinion of TWS is excessive or otherwise to the substantial detriment of the other customers for the Services TWS reserves the right to suspend or limit the provision of Services to the Customer. TWS will, where practicable, give the Customer such notice as is reasonably practicable of its intention to operate pursuant to this clause.
- 20 The Customer will be liable for any excess network traffic over the limit as specified in the Price List or as specified by written quotation' and in the event of any network traffic attributable to the Customer TWS may charge additional Charges in accordance with clause 4 of Part A above.

### **SECTION 3 – E-MAIL SERVICES (including e-mail forwarding)**

- 21 Together with the General Terms, Section 3 applies to the provision of e-mail services by TWS.
- 22 When sending e-mail, the Customer acknowledges that it is responsible for complying with any Relevant Legislation.
- 23 The Customer acknowledges that all e-mails sent via TWS's network are automatically anti-spam and anti-virus scanned and TWS reserves the right to use whichever software programs it chooses to perform such scans.
- 24 Notwithstanding clause 23 of Part B, the Customer acknowledges that TWS is not responsible for the security of the contents of e-mail sent or received by the Customer.
- 25 TWS will use its reasonable endeavours to ensure that messages are routed accurately and promptly but does not accept any liability for non-receipt, non-delivery or misrouting of e-mail or any other failure of the e-mail system.
- 26 TWS's policy is to respect the privacy of e-mail messages sent, received forwarded or otherwise dealt with by it and the Customer acknowledges that TWS will therefore not monitor, edit or disclose the contents of such messages unless required to do so

by law or competent authority or to protect TWS's rights and/or position and that it will maintain as Confidential Information any email messages it does monitor.

#### **SECTION 4 – CREDIT AND DEBIT CARD PROCESSING**

27 Together with the General Terms, Section 4 applies to the provision of E-commerce and Credit and Debit Card Processing (EcomMerchant) services by TWS.

28 The following definitions will apply to this Section 4 in addition to those set out in the General Terms:

Credit or Debit Card Processing	The service offered by TWS whereby TWS acts as an intermediary between the Customer and an Acquiring Bank allowing debit card and credit card payments to be accepted through the Customer's Website and other means such as over the telephone;
Minimum Term/Period	The minimum agreement term for the EcomMerchant service will be twelve months unless agreed in writing by TWS;
EcomMerchant	Service provided by TWS for the purpose of Credit or Debit Card Processing;
Merchant	Customer (these terms are used interchangeably);
Shopping Basket	Software usually residing on a customers' web site for the purpose of cataloguing products or services for sale by the customer;
Plug-in	and Software providing integration between a Shopping Basket and the EcomMerchant service for Credit or Debit Card Processing.

29 TWS is an accredited Payment Service Provider approved by several Acquiring Banks to provide Credit and Debit Card Processing over the Internet, over the telephone and various other methods including using a Chip and Pin Terminal. TWS will maintain its high standard in security by renewing its accreditation as a Payment Card Industry accredited company each year. TWS has put in place various security procedures to maintain the Credit Card Processing Services and TWS's systems are as secure as possible, including the use of the Payment Card Industry Security standard to encrypt personal information including credit and debit card details.



## Nature of Services and Use of Services

30 In providing Card Processing Services TWS acts as an intermediary facilitating the authorization of credit and debit cards between the Customer and the Acquiring Bank. The Customer acknowledges that TWS does not provide the settlement (payment of authorised cards into the customers bank account) for cards processed through their merchant account but instead passes this to the Acquiring Bank with whom the customer has a separate agreement.

31 In order to use the Credit and Debit Card Processing Services the Customer must:

31.1 obtain and maintain an Internet Merchant account (this can be facilitated by TWS) from an Acquiring Bank and bear any associated costs in regards to setting up and maintaining the account;

31.2 set-up such merchant accounts as are required to accept transactions in currencies other than sterling as it deems necessary; and

31.3 obtain any and all necessary consents, approvals and permissions from its customers and the Acquiring Bank to allow TWS to provide the Credit or Debit Card Processing services in accordance with the Contract.

and the Customer indemnifies TWS in respect of any breach of its obligations under this clause.

32 The Customer must not, whilst using the EcomMerchant Services, store credit or debit card data on their own hosted web space. Although TWS stores the credit and debit card data within the confines of its secure network it is possible that customers using the API mechanism can store card data prior to it reaching TWS's network. In these instances the Customer agrees not to store card data unless this has been agreed by a PCI Qualified Security Assessor (QSA) and a copy of the accreditation has been supplied to TWS.

33 The Customer agrees not to divulge any account login information (such as passwords) it uses in connection with the operation of the EcomMerchant Services to anyone who does not need it in the course of their duties.

34 The Customer agrees not to authorize a credit or debit card for a second or subsequent time without the prior agreement of its own customer (the cardholder).

- 35 If the Customer is using API method to authorize credit or debit cards through TWS's system then the part of the Customer's website into which the purchaser enters its credit card details needs to be secured with a valid trusted 128-bit SSL digital certificate. It is the Customer's responsibility to ensure that this data is secured in this manner and failure to do so will result in immediate suspension of the EcomMerchant Services.
- 36 TWS will, at its discretion, supply a control panel accessible over the Internet, to enable its EcomMerchant customers to examine successful and unsuccessful transactions processed through the customers merchant account. It may also offer technical and accounting support so that customers can reconcile any technical or administrative problems that occur from time to time.

#### Testing And Shopping Basket Integration

- 37 The Customer will allow TWS to use their Merchant Account for testing and technical support purposes. TWS reserves the right to test the operation of the service to authorize live and test transactions through the Customer's account via their website, merchant control panel or other mechanism. TWS will notify and endeavour to seek the permission of the Customer first. TWS will refund or reverse any live or test transactions it makes. TWS will not be held liable for any products/services shipped/provided as a result of its testing.
- 38 Shopping Basket plug-ins are provided as is and TWS offers no guarantee of their operational stability or security. Most plug-ins are developed by third-parties and even those that are developed by TWS are provided on the basis that TWS is not held liable for any loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever which arise out of or in connection with the supply of a plug-in.
- 39 Should a customer wish to use an alternative shopping basket then it is the customer's responsibility to ensure that the shopping basket plug-in is compatible with our EcomMerchant service. TWS will not be held liable for any costs associated with transferring to an alternate shopping basket and the customer accepts that this does not constitute a change to this agreement in whole or in part.
- 40 Changing shopping basket to an alternative provider part way through the minimum period will result in an administration fee and will require the customer to re-test and re-integrate their shopping basket software with the EcomMerchant service. Changing

shopping basket in no way constitutes a resetting of the minimum period or rescinds this agreement in whole or in part.

- 41 Shopping Basket plug-in versions may differ from version to version of the shopping basket software. The customer accepts that when a particular shopping basket plug-in is supplied by TWS or the shopping basket vendor that this is compatible with the EcomMerchant service as well as the specific Shopping Basket version.
- 42 A small number of vendors charge for Shopping Basket plug-ins and TWS will not cover any costs associated with the acquisition of a plug-in for use by the customer with the EcomMerchant service. It is solely the customer's decision as to which Shopping Basket is used and therefore the customer accepts and agrees to pay any vendor charges arising out of the use of that vendor's software.
- 43 It is the customer's responsibility to ensure any issues or problems with their operation of the EcomMerchant service are addressed during the account testing phase. TWS provide a minimum of service tests which the customer must pass before an account is put live but also expect customers to do their own extensive testing to confirm shopping basket plug-in compatibility and system operation.

#### Term and Cancellation

- 44 The Customer must agree to a minimum of twelve months (the minimum period) from the date TWS creates either their live or test EcomMerchant account on the TWS systems, being in receipt of their Internet Merchant Account. Customers are notified via email when their account has been created. Any free period offered on the commencement of this initial twelve month minimum term will extend the minimum term by the free period offered. For instance a free period offered of one month will mean the minimum term of thirteen months is expected.
- 45 Cancellation by the customer within the minimum period will result in a cancellation charge equivalent to the remainder of the minimum term. This charge is calculated by the cost of all services enabled under the EcomMerchant service at the time of cancellation multiplied by the remainder of the minimum term in months or £50+VAT, whichever is the greater. A minimum notice period of 30 days must be given prior to cancellation being accepted and their account being disabled.
- 46 Cancellation by the customer outside the minimum period will require a minimum 30 days notice after the end of the month the customer provided notice in writing to

cancel. So should the customer cancel on the 1<sup>st</sup> of the month then cancellation of their account would take place at the end of the following month.

- 47 TWS reserves the right to cancel the EcomMerchant Service supplied to the Customer giving 30 days' notice in writing. TWS will not be held liable for any costs associated with obtaining a competing service elsewhere.
- 48 Cancellation can also be instigated by the Acquiring Bank and in this event cancellation may take place in accordance with their terms. Any TWS cancellation charges will still be charged to the customer in this instance.
- 49 The EcomMerchant service agreement runs concurrently and therefore cannot be paused and subsequently restarted during the minimum or cancellation period.

#### Payment

- 50 Payment will be collected by Direct Debit for any charges incurred using the EcomMerchant service. Other payment methods will incur additional administration charges.
- 51 Any service enabled under the EcomMerchant service carries with it a monthly service fee (i.e. Recurring Payments) which is payable regardless of how many days that service has been active in a given month. Once enabled that particular service is chargeable and no pro-rata refund will be given for services only enabled for part of a given month or indeed any service cancelled part-way through a given month. A minimum service of either ECOM or MOTO is expected to maintain the EcomMerchant service operation.

#### Scheduled and emergency maintenance

- 52 Scheduled and emergency maintenance will be carried out on the system of up to a combined two hours a month. This is for updates and patches to be applied to the servers. Any scheduled or emergency maintenance will be posted on the TWS status page and / or the EcomMerchant News section.

#### Liability

- 53 TWS shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for loss of profit or for any indirect,

special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of TWS, its employees or agents or otherwise) which arise out of or in connection with the supply of the EcomMerchant Services (including any delay in supplying or any failure to supply in accordance with the contract or at all) and the entire liability of TWS under or in connection with the contract for EcomMerchant Services shall not exceed TWS's charges to the Customer over the previous month, or, if greater, its average monthly charge to the Customer, except as expressly provided in these Terms. This clause 44 shall take precedence over clause 10.7.

- 54 For the avoidance of doubt, in no circumstances will TWS be liable to the Customer for any loss of profit, business or anticipated savings suffered by the Customer as a result of:
- 54.1 the Customer's failure to obtain or maintain an Internet Merchant Account with the Acquiring Bank;
  - 54.2 failure of the Acquiring Bank to authorise any Credit or Debit Card transaction;
  - 54.3 failure of TWS to authorise any Credit or Debit Card transactions (unscheduled downtime) as a result of a Denial Of Service Attack or other external factors outside its own control;
  - 54.4 late or incorrect settlement of any Credit or Debit Card transactions by the Acquiring Bank irrespective of whether the mistake has arisen as a result of incorrect and/or insufficient information provided by TWS. TWS will always attempt to rectify any defective settlement in a timely manner;
  - 54.5 fraud committed in the course of a Credit or Debit Card transaction (howsoever committed) SAVE THAT TWS shall be liable to the Customer for loss, damages, costs, claims and expenses arising solely as a result of fraud committed by TWS or its employees or officers.
- 55 The Customer acknowledges that the information provided by its customers is not checked by TWS and, accordingly, that TWS cannot be held liable for the accuracy of such information.

- 56 TWS will endeavour to keep up with industry changes but shall not be liable for any damages arising out of not being able to implement new technology such as new anti-fraud measures like 3-D Secure.
- 57 TWS makes no warranty or representation of any kind in relation to any processing of any Credit or Debit Card transactions by the Acquiring Bank.
- 58 TWS shall not be liable for any chargebacks the Customer experiences during the use of the EcomMerchant Services. Chargebacks are the responsibility of the Merchant (the Customer) unless a liability shift has occurred in the case of a 3-D Secure transaction.
- 59 With the permission of the Customer TWS may make modifications to the Customer's website to facilitate the integration into TWS's EcomMerchant service. In this instance TWS cannot be held liable for incorrect operation of the Customer's website due to the modifications as TWS always recommends that the Customer implements these changes itself.
- 60 The customer agrees to maintain its own PCI Accreditation in accordance with PCI standards as determined by the customers' QSA. TWS will not be held liable for any charges levied by the Acquiring Bank, resulting from the customers failure to achieve or maintain its required level of PCI accreditation;
- 61 Nothing in these terms shall restrict TWS's liability in respect of death or personal injury caused by TWS's negligence, or liability for its own fraud.

#### Fraud

- 62 The Customer agrees that in the event of any breach in security on their merchant account they will facilitate any investigation into the breach should their merchant account be involved in the fraud.
- 63 TWS will provide all reasonable assistance to the Customer should they have experienced fraud on their account.
- 64 The Customer agrees to accept TWS's anti-fraud mechanisms as a way to protect its customers from fraudulent activity. This may mean on occasions that credit cards processed through its system will be either declined or rejected if the TWS Anti-Fraud Engine considers the transaction to be possible fraud. These are very measured and controlled facilities, which the Customer will have some control over.

## Batched Transactions

- 65 TWS will submit all transactions to the Merchant's bank for processing subsequent to the end of each day (Settlement). TWS cannot be held liable for settlement not reaching the Acquiring Bank the day after transactions have taken place however will submit the transactions within one month of the transactions taking place. Settlement is usually sent the following day however on occasion it is not possible to submit this because of technical issues between TWS's systems and that of the Acquiring Bank., resulting in delayed settlement.

## Administration Fees

- 66 TWS reserves the right to charge an administration fee over and above its standard service tariffs for the following:
- 66.1 The change of customer bank account where funds are settled. An administration charge of £20 will be levied.
  - 66.2 The change of Acquiring Bank used in the processing of credit and debit card transactions. An administration charge of £20 will be levied;
  - 66.3 The change (from the original integration) of the shopping cart used to process Internet Credit or Debit card transactions through the customers EcomMerchant account. An administration charge of £20 will be levied;
  - 66.4 The provision of verbose log information against specific transactions conducted through the customers EcomMerchant account. Log information such as MPI 3D Secure logs or Web Server log information. An administration charge of £20 per instance will be levied;
  - 66.5 Failed or incomplete transactions where we believe a customers EcomMerchant account is being mismanaged and resulting in a high number of failed or incomplete transactions. Typically an EcomMerchant account that has more failed or incomplete transactions (combined) than successful transactions is being mismanaged and will result in a per transaction charge equivalent to a successful per transaction charge for all failed or incomplete transactions in a given month;
  - 66.6 When an EcomMerchant account in test goes over a ninety day period then an administration fee of £20 will be levied to re-activate the test account;

66.7 Customer negligence in the use of the EcomMerchant Service. For example, a customer would be deemed negligent if it were to inform TWS's technical support team that it believes there has been a card processed through its account which it knows nothing about, but technical support, after investigating the problem thoroughly finds out that one of the customer's staff had logged into the EcomMerchant account to process the card manually and not informed anyone. An administration charge of £20 would be levied;

## **SECTION 5 – BROADBAND**

67 Together with the General Terms, Section 5 applies to the provision of Broadband Services provided by TWS. Line Provider and Broadband Provider are used interchangeably in this section.

68 TWS uses varying different Broadband Providers for the provision of its Broadband Services. To use the Broadband Service the Customer will require as a minimum an appropriate fixed telephone or fibre line. TWS is not responsible for disruptions to networks provided to it in the provision of its broadband services. If the Customer encounters any problems with the same it should contact the Line Provider such as BT or request that TWS raise a query with the Line Provider on the Customer's behalf. There maybe an associated cost for the same which the Customer agrees to pay should it request that TWS raise a query on their behalf.

69 The Customer acknowledges that the provision of Broadband Services will be subject to a technical feasibility survey by TWS and is subject to the successful activation of the Broadband Service to the Customer. If the survey informs TWS that the supply of Broadband is not technically feasible or it is unable to carry out the survey or activate the Broadband service TWS will inform the Customer and end the Order for Broadband Services without charge to the Customer (refunding any Charges already received from the Customer in respect of the effected Order for Broadband Services).

70 If the Broadband Provider increases its charges to TWS in connection with the Broadband Services, such increase will be passed on to the Customer, provided that TWS gives to the Customer 28 days' notice in writing of its intention to increase the Charges for the Broadband Services. Within 7 days of receiving such notice the Customer may notify TWS in writing that it wishes to terminate the Contract in respect of the Broadband Services with effect from the date of any proposed change to the Charges and TWS may then choose to alter the Charges, withdraw the notice, or accept the Customer's notice of termination.

71 The Broadband Service supplied by TWS to the Customer shall be subject to its Acceptable Usage Policy (AUP) available for download from its web site.



- 72 The Customer undertakes to use the Broadband Services for business purposes only and to not use the Services for inappropriate purposes such as file sharing.
- 73 If the Customer is in breach of clause 44 of Part B above, TWS may (in addition to its other rights contained in these Terms) in its sole discretion suspend, restrict or terminate the availability of Broadband Services to the Customer.
- 74 The Customer is responsible for configuring and managing its own firewalls and for taking all precautions necessary to secure its network connected to our Broadband Service.
- 75 Any equipment provided to the Customer in connection with the Broadband Services is owned and supplied to TWS by third party suppliers and any warranties applying to such equipment will be provided by the relevant third party supplier.
- 76 TWS reserves the right to change the IP address or IP block which is allocated to the Customer from time to time.
- 77 The Total Web Solutions Broadband Service provides the Customer with access to the Internet. The Customer accepts that use of the Internet is at their own risk and subject to any applicable laws. Total Web Solutions has no responsibility for any goods, services, information, software or other materials the Customer user or purchase over the Internet connection provided.
- 78 Total Web Solutions offers a number of different service packages for its Broadband Service. All services are subject to bandwidth allowances which determine usage over any given calendar month. Any customers who exceeds their allowance will be subject to an overage charge which is clearly defined on the Total Web Solutions web site. This amount will be taken in arrears and the customer agrees to pay the overage tariff should they exceed their monthly allowance. Total Web Solutions reserves the right to introduce a mechanism that will force users of its broadband service to pay for extra allowance immediately, should they exceed their allowance in any given month. The mechanism may come in the form of a redirected web page which would expect payment to be made before Internet connectivity is to resume and Customers allowance increased.
- 79 Should a Customer decide to cancel their Broadband service with Total Web Solutions then any and all applicable termination charges levied by the telco provider (e.g. BT) will be passed to the Customer along with any notice period and cancellation charges levied by Total Web Solutions as published in its tariffs.

Effective Date: 25th May 2018.