

Web Hosting and Internet Services Terms and Conditions

Server Use

blue spark Ltd ("blue spark") provide World Wide Web hosting and email services through selected third party suppliers. blue spark reserve the right to suspend or cancel a customer's access to any or all services provided by blue spark if blue spark or its suppliers decide that the account has been inappropriately used or otherwise. Blue spark do not allow any of the following content to be stored on its servers:

- o Illegal Material - This includes copyrighted works, commercial audio, video, or music files, and any material in violation of any UK legislation.
- o Adult Material - Includes all pornography, erotic images, or otherwise lewd or obscene content. The designation of "adult material" is left entirely to the discretion of blue spark or its suppliers.
- o Warez - Includes pirated software, ROMS, emulators, phreaking, hacking, password cracking, IP spoofing, etc., and encrypting of any of the above. Also includes any sites which provide "links to" or "how to" information about such material.

Reselling of Services

All accounts are to be used by the primary owner only, and do not allow the holders to resell, store or give away web-hosting services of their website to other parties. Web hosting services are defined as allowing a separate, third party to host content on the owner's web site.

Software Licence and Rights

If the Customer requires use of software owned by or licensed to blue spark or its suppliers in order to use the Services, blue spark grants to the Customer and its employees, agents and third party consultants and contractors, a royalty-free, world-wide, non-transferable, non-exclusive licence to use such software in object code form only, in accordance with the terms of this Agreement. For the avoidance of doubt, this Agreement does not transfer or grant to the Customer any right, title, interest or intellectual property rights in the software.

In relation to blue spark or its suppliers obligations under this Agreement in connection with the provision of the Services, the Customer grants to blue spark and its suppliers a royalty-free, world-wide, non-exclusive licence to use the Customer Software and all text, graphics, logos, photographs, images, moving images, sound, illustrations and other material and related documentation featured, displayed or used in or in relation to the Website ("the Content"). For the avoidance of doubt, this Agreement does not transfer or grant to blue spark and its suppliers any right, title, interest or intellectual property rights in the Customer Software or the Content.

The Customer undertakes that they will not themselves or through any third party, sell, lease, license or sublicense any software provided by or through blue spark.

Service Levels and Backup

blue spark and its suppliers shall use its reasonable endeavours to make the server and the Services available to the Customer 99.99% of each calendar month but because the Services are provided by means of computer and telecommunications systems, blue spark and its suppliers makes no warranties or representations that the Service will be uninterrupted or error-free and blue spark and its suppliers shall not, in any event, be liable for interruptions of Service or downtime of the server.

blue spark and its suppliers carries out data backups for use in the event of systems failure, however we do not provide data restoration facilities for individual customers. Even though every effort is made to ensure data is backed up correctly blue spark and its suppliers accept no responsibility for data loss or corruption.

It is your responsibility to maintain appropriate and up-to-date back-up copies of any data, information or other material you upload (or permit to be uploaded) onto our servers ("Material") as part of your use of the Hosting Services.

Please note we may require suspension of some of our services for short scheduled periods to carry out maintenance or repair to our services.

Acceptable Use Policy

The Website and use of the Services may be used for lawful purposes only and the Customer may not submit, publish or display any content that breaches any law, statute or regulation. In particular the Customer agrees not to:

- o use the Services or the Website in any way to send unsolicited commercial email or "spam", or any similar abuse of the Services;
- o send email or any type of electronic message with the intention or result of affecting the performance of any computer facilities;
- o publish, post, distribute or disseminate defamatory, obscene, indecent or other unlawful material or information, or any material or information which infringes any intellectual property rights (for the avoidance of doubt this includes licensed software distributed as Warez), via the Services or on the Website;
- o threaten, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
- o engage in illegal or unlawful activities through the Services or via the Website;
- o make available or upload files to the Website or to the Services that the Customer knows contain a virus, worm, trojan or corrupt data; or
- o obtain or attempt to obtain access, through whatever means, to areas of the network or the Services which are identified as restricted or confidential
- o operate or attempt to operate IRC bots or other permanent server processes.

The Customer has full responsibility for the content of the Website. For the avoidance of doubt, Blue Spark or its suppliers is not obliged to monitor, and will have no liability for, the content of any communications transmitted by virtue of the Services. Blue Spark or its suppliers are permitted to investigate and review any resource, traffic or activity on the service.

If the Customer fails to comply with the Acceptable Use Policy blue spark and its suppliers shall be entitled to withdraw the Services and terminate the Customer's account without notice.

Use policy

The Hosting Service package you order includes the per calendar month bandwidth allowance applicable to that hosting package as set out on our website at the time of your order. The Hosting Service you have ordered will (at our sole discretion) be automatically suspended if this monthly bandwidth allowance is exceeded. If this happens, you will need to upgrade your Hosting Service package to one which includes a higher monthly bandwidth allowance, or wait for the Hosting Service to resume at the start of the following calendar month.

High resource use policy

Resources are defined as bandwidth, processor utilization or disk space.

Unless the Hosting Service package you order includes a dedicated server, you will only be allowed to use a maximum of five (5) per cent of a server's processing capacity when using the Hosting Service package you order. At our absolute discretion, we may allow your usage to exceed this limitation, and we will speak to you about your hosting requirements if your usage has, or may have, a detrimental effect on our other customers.

Web space is provided for genuine web site content, and content must be linked into web pages. Customers are prohibited from using the server as a file/backup repository. Customers are expected to employ good house keeping when maintaining their account.

The Hosting Service package you order includes the number of mailboxes applicable to that hosting package as this is set out on our website at the time of your order. However, any mailboxes that have not been accessed for one hundred (100) clear days will be automatically deleted from our system.

We shall be entitled to terminate the Contract, or suspend or terminate the provision of any individual Services, if you are in breach of our acceptable use policy <http://www.bluespark.co.uk/ACCEPTABLE-USE-POLICY.pdf>

Domain Names

Where the Contract includes our Domain Registration and Renewal Service we will endeavour to procure the registration of the domain name you request.

We will not be liable in the event that the relevant domain name registry refuses to register the domain name you request, or subsequently suspends or revokes any registration for that domain name.

The registration of the domain name you request and its ongoing use is subject to the relevant domain name registry's terms and conditions of use which you should obtain and consider. You are responsible for ensuring that you are aware of the terms applicable to a domain so that you can comply with them.

The domain name you request will only have been successfully registered when you appear as the registrant on the appropriate "whois" database of the top level domain name registrar.

We shall have the absolute discretion to require you to select a replacement domain name to the one you have requested to be registered, and may suspend or terminate our performance of the Domain Registration and Renewal Service, if, in our opinion, there are reasonable grounds for us to believe that your current choice of name is, may or is likely to be in bad faith, breach of the provisions of these terms and conditions or any legal or regulatory requirement.

You confirm and warrant that you are the owner of any trade mark in any domain name (or have the authority of the owner of any trade mark to use such name) that you have requested be registered.

You confirm and warrant that you are the legal owner of any domain name (or have the authority of the legal owner to use such domain name) supplied by you, or otherwise authorised by you, for use as a domain name in connection with any website in relation to which the Hosting Service supplied to you is used.

Once the domain name has been successfully registered, it will need to be renewed periodically to ensure you retain your registration of it.

Any registration, verification, renewal or suspension notices will be sent to the email address registered against your account. It is you, the registrant, that must ensure you maintain valid contact information, respond to any verification requests by the registry administrator and advise us of any changes to information.

Failure to update or respond to verification requests by the registry administrator will result in domain suspension and eventual deletion. We will not be liable in such circumstances and there will be no refund of any amounts paid.

Payment policies

All accounts are set up on a prepay basis. Although we reserve the right to change prices of accounts or services at any time, all pricing is guaranteed for the period of prepayment. Payment is due every 30 or 365 days, following the date the account was established. Customers will automatically be charged again at the end of their prepay period unless closure notification has already been given.

In the event that any payment is not made, blue spark reserves the right to suspend all services until the outstanding debt is cleared. The customer is responsible for all money owed on the account from the time it was established to the time that the customer sends a written cancellation request. All payment is in UK sterling.

Cancellation and refunds

Blue spark reserves the right to cancel the service at any time. In this event customers will be entitled to a pro rata refund based upon the remaining period of membership. If a customer contravenes blue spark's terms of service a refund will not be issued in the event of a cancellation.

Customers may cancel their account at any time. Fees charged on a prepay basis are non-refundable. In addition some accounts incur set-up fees, these charges are also non-refundable.

Indemnification

Customer agrees that it shall defend, indemnify, save and hold blue spark and/or its suppliers harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against blue spark and/or its suppliers, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold harmless blue spark and/or its suppliers against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with any server; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to customer from any server.

Limitation of Liability

Nothing in these terms and conditions shall exclude or limit blue spark and/or its suppliers liability for death or personal injury resulting from its negligence or that of its employees, agents or sub-contractors. Our maximum aggregate liability under or in connection with the performance or contemplated performance of the Contract, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed one hundred and ten (110) per cent of the price you have paid to us for the Services during the twelve (12) months preceding the event giving rise to the liability in question.

Accordingly, you are advised to acquire business interruption insurance, or other appropriate insurance, to protect you and your business in the event of interruption of the Services (in particular the Hosting Service).

In no event shall blue spark and/or its suppliers be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or blue spark had been made aware of the possibility of the Customer incurring such a loss.

blue spark and/or its suppliers makes no warranties of any kind, expressed or implied for services we provide. blue spark and/or its suppliers disclaim any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, nondeliveries, wrong delivery, and any and all service interruptions caused by blue spark and/or its suppliers and its employees. blue spark and/or its suppliers reserves the right to revise its policies at any time.

Severance

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

Notices

Any notice to be given by either party to the other may be sent by either email or recorded delivery to the address of the other party as appearing in this Agreement or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by recorded delivery shall be deemed to be served 2 days following the date of posting.

Deletion of your data

If you cancel your Services, any data we hold or host in relation to the Services you have cancelled may be immediately and permanently deleted from our system. Accordingly, you are strongly advised to make appropriate copies of such data before you cancel your Services.

Third party rights and transfer of rights and obligations

Neither you nor we intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

The Contract is binding on you and us and on our respective successors and assigns.

You may not transfer, assign, charge or otherwise dispose of the Contract, or any of your rights or obligations arising under it, without our prior written consent.

We may transfer, assign, charge, sub-contract or otherwise dispose of the Contract, or any of our rights or obligations arising under it, at any time during the term of the Contract.

Events outside our control

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by events outside our reasonable control ("Force Majeure Event").

A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following: misuse, alteration or interference by you or any third party of our servers or systems (including virus and hacker attacks); strikes, lock-outs or other industrial action; civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; impossibility of the use of public or private telecommunications networks; and the acts, decrees, legislation, regulations or restrictions of any government.

Our performance under the Contract will be deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

Entire Agreement

This Agreement contains the entire Agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. This Agreement may be updated without notice.

Governing Law and Jurisdiction

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

Please note: by signing up for any of our services you agree to be bound by all our terms and conditions.

**blue spark limited Registered in England & Wales Company number 0934930
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