

# TERMS AND CONDITIONS – C D ASSOCIATES

The following Terms and Conditions of Service apply to all products and services provided by C D Associates.

All work is carried out by C D Associates on the understanding that the client has agreed to C D Associates' terms and conditions. C D Associates reserve the right to us whatsoever or whosoever they wish as partners to provide services to their customer.

Where the context admits:

- "We", "Us", "Our", "Primary, Partner or Affiliates" or other identifying terms includes: C D Associates of: Lea House, Newbury Street, Wantage UK or any party or Partner company acting on C D Associate's implicit instructions.
- "The Client" The company or individual requesting the services of C D Associates.
- "You" includes the company or individual requesting the services of C D Associates, the person purchasing the services or any party acting on the customer's instructions.
- "The Registrant" includes the person applying for a domain name or any party acting on the Registrant's instructions.
- "The Registry" the relevant domain names Registry.
- "Server" means the computer server equipment operated by us or our Providers in connection with the provision of the Services.
- "Web Site" means the area on a Server allocated by us or our Partners to you for use by you as a site on the Internet.

In consideration of the mutual covenants herein, the parties agree to the following, which shall apply during the term of this agreement

## 1. Domain Name Registration

- 1.1 We make no representation that the domain name you wish to register is capable of being registered by or for you or that it will be registered in your name. You should therefore not assume registration of your requested domain name(s) until you have been notified that it has or they have been registered. Any action taken by you before such notification is at your risk.
- 1.2 The registration and use of your domain name is subject to the terms and conditions of use applied by the relevant naming authority; you shall ensure that you are aware of those terms and conditions and that you comply with them. You shall have no right to bring any claim against us in respect of refusal to register a domain name. Any administration charge paid by you to us shall be non-refundable notwithstanding refusal by the naming authority to register your desired name.
- 1.3 We shall have no liability in respect of the use by you of any domain name; any dispute between you and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, we shall be entitled, at our discretion and without giving any reason, to withhold, suspend or cancel the domain name. We shall also be entitled to make representations to the relevant naming authority but will not be obliged to take part in any such dispute.
- 1.4 We shall not release any domain to another provider unless full payment for that domain and other relevant services has been received by us.
- 1.5 By purchasing or using any UK domain name you are bound by the NOMINET UK terms and conditions. These can be viewed at [www.nominet.co.uk](http://www.nominet.co.uk).
- 1.6 We reserve the right to impose a fee for performing administrative changes to domains.
- 1.7 In order to offer competitive prices and services we may register domains with other registrants. In which case the registration will only contain the information these other registrants support.
- 1.8 A 'transfer-out' of a domain from our control will be seen as an immediate cancellation of any hosting, or other, services attached to that domain. No refunds will be made in respect of incomplete use of such services.
- 1.9 The Intellectual Property Rights of any domain remain with us until all registration and other fees relating to the use of the domain have been, and remain, paid in full following initial registration and renewals.
- 1.10 Any late payment of domain fees or any service related to the domain immediately gives us the right to perform an address change on the domain to our own choosing.

## 2. Web Site Hosting and Email

- 2.1. We make no representation and give no warranty as to the accuracy or quality of information received by any person via our Server or any server owned by our Partner companies and we shall have no liability for any loss or damage to any data stored on the Server.
- 2.2. You shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server.
- 2.3 You represent, undertake and warrant to us that you will use any and all Web Site space allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that:
  - 2.3.1 You will not use the Server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so
  - 2.3.2 you will not post, link to or transmit:
    - (a) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way.
    - (b) any material containing a virus or other hostile computer program.
    - (c) any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.
  - 2.3.3 You will not send bulk email whether opt-in or otherwise from our network. Nor will you promote a site hosted on our network using bulk email.
  - 2.3.4 You will not employ programs which consume excessive system resources, including, but not limited to, processor cycles and memory.
  - 2.3.5 Any file you store on the Server will be reachable via a hyperlink from a page on your site.
- 2.4 We reserve the right to remove any material which we deem inappropriate from your web site without notice. You agree not to host warez, adult material or illegal MP3 content.
- 2.5 You shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information.
- 2.6 You shall observe the procedures which we may from time to time prescribe and shall make no use of our Server or Partners' server which is detrimental to our other customers.
- 2.7 While we will use every reasonable endeavor to ensure the integrity and security of the Server or our Partners' Servers, we do not guarantee that they will be free from unauthorised users or hackers and we shall be under no liability for non-receipt or misrouting of email or for any other failure of email.
- 2.8 Application or Technical level support of any services or products supplied is not included in the fee charged. Support is only given where it can be clearly shown that our service is at fault and is limited to best endeavours. Specifically services such as FrontPage Extensions, PHP, ASP, MySQL, SSL, SQL etc. are on an 'as supplied' basis.

## 3. Acceptable Use Policy

- 3.1 The Internet is a powerful information and entertainment tool, we would expect our customers to use the Internet with respect, courtesy, and responsibility, giving due regard to the rights of other Internet users.
- 3.2 Our acceptable use policy is actively and strictly enforced. Offending content or users are removed from our network, usually as soon as they are discovered, although we will always inform you when and why any action has been taken.
- 3.3 Common sense is the best guide as to what is considered acceptable use, however the following are unacceptable uses:
  - (a) Illegality - In any form, including but not limited to the unauthorised distribution or copying of copyrighted software or other data, harassment, fraud, trafficking in obscene material.
  - (b) Undesirable Content - Certain types of content are not allowed on our network. We do not host adult content of any description. Content relating to Hacking, Cracking, Warez and IRC is not allowed. Software downloads may only be hosted if you are the writer and copyright owner of the software, all other software including freeware, shareware and trial software is forbidden. Audio and video downloads may only be hosted if you are the creator and copyright owner of the work.
  - (c) Bulk Email - The use of our network to send bulk email whether opt-in or otherwise, and the use of bulk email to promote a site on our network is strictly forbidden.
  - (d) Misuse Of Resources - Including but not limited to employing applications which consume excessive CPU time, memory or storage space. Chat/IRC, web proxy and mailing list scripts are not allowed on our network under any circumstances. Streaming media can be a drain on web server resources and as such is not allowed. CGI based message forums which use flat file databases are often found to use excessive system resources, to avoid disappointment please use a PHP/ASP message forum. The use of web cam applications which maintain a constant FTP connection uploading an image at regular intervals is forbidden
- 3.4 If you are unsure about content you intend to place on our network, please check with us before you do. We reserve the right to determine what constitutes acceptable use.

#### 4. Service Availability

- 4.1 We shall use our reasonable endeavours to make available to you at all times the Server and the Services but we shall not, in any event, be liable for interruptions of Service or down-time of the Server.
- 4.2 We shall have the right to suspend the Services at any time and for any reason, generally without notice, but if such suspension lasts or is to last for more than 7 days you will be notified of the reason.

#### 5. Payment for Web Site Hosting and Email

- 5.1 All charges payable by you for Services shall be in accordance with the scale of charges and rates published from time to time by us on our web site, or quoted to you in writing or verbally. We reserve the right to change pricing at any time although all pricing is guaranteed for the period of pre-payment.
- 5.2 Payment is due each anniversary month, quarter or year following the date the Services were established until closure notice is given.
- 5.3 All payments must be in UK Pounds Sterling.
- 5.4 If your cheque is returned by the bank as unpaid for any reason, you will be liable for a "returned cheque" charge of £35.
- 5.5 Without prejudice to our other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, we shall be entitled forthwith to suspend or cancel the provision of Services to you.
- 5.6 Where service is suspended or cancelled due to non-payment we reserve the right to utilise the hosting/domain service for advertising in order to retrieve monies outstanding. Alternatively we may put an appropriate non-payment message on the website. No refund for the time period that the account is suspended for will be made or allowed.
- 5.7 Under no circumstances will technical support be provided where there are any amounts overdue for payment.
- 5.8 Should 'You' state or imply cancellation, request for transfer or any other reduction in services provided by 'Us' then all monies outstanding will become immediately payable, even where due dates on issued invoices have not yet been reached. This includes services supplied or ordered even where invoices have not yet been issued.

#### 6. Termination

- 6.1 If you fail to pay any sums as they fall due, we may suspend the Services and/or terminate this Agreement forthwith without notice to you.
- 6.2 If you break any of these terms and conditions we may suspend the Services and/or terminate this Agreement forthwith without notice to you.
- 6.3 If you are a company and you go into insolvent liquidation or suffer the appointment of an administrator or administrative receiver or enter into a voluntary arrangement with your creditors, we shall be entitled to suspend the Services and/or terminate this Agreement forthwith without notice.
- 6.4 No refunds will be made for Services suspended in accordance with 6.1, 6.2 and 6.3.
- 6.5 We reserve the right to suspend the Services and/or terminate this Agreement at any time. In the event of this You will be entitled pro rata refund based upon the remaining period of membership.
- 6.6 You may cancel the Services at any time. No refunds are possible.
- 6.7 During the first 30 days of Services, You are entitled to a complete refund of all fees paid with the exclusion of domain name registration, dedicated server and data transfer fees should You decide to cancel the Services. You will not be entitled to a refund on this basis if you have previously had an account with us.
- 6.8 On termination of this Agreement or suspension of the Services we shall be entitled immediately to block your Web Site and to remove all data located on it.
- 6.9 We are entitled to cancel your service at any time as long as a minimum of one month's notice has been given to you. We shall offer, where possible, an alternative service or a refund of any incomplete part of the product or service paid for.

#### 7. Indemnity

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

#### 8. Limitation of Liability

- 8.1 All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to sub-clause 8.2.
- 8.2 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.
- 8.3 Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim.
- 8.4 In any event no claim shall be brought unless you have notified us of the claim within one year of it arising.
- 8.5 In no event shall we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

#### 9. Law

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

#### 10. Headings

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

#### 11. Entire Agreement

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

#### 12. Disclaimer

- C D Associates makes no warranties of any kind, express or implied, for any and all products and/or services that it supplies. C D Associates will not be held responsible for any and all damages resulting from products and/or services it supplies. C D Associates is not responsible for any loss, or consequential loss of data, or non-delivery of products or services, of whatever cause. While we take reasonable steps to investigate the materials we recommend, we accept no responsibility for the performance or quality of materials or any consequential loss arising from their failure. The customer agrees not to hold C D Associates responsible for any such loss or damage. Any claim against C D Associates shall be limited to the relevant fee(s) paid by the customer.

#### 13. General

- These Terms and Conditions dated 7<sup>th</sup> April 2008 supersede any previous Terms and Conditions distributed in any form.  
C D Associates reserves the right to change any rates and any of the Terms and Conditions at any time and without prior notice.