

## ENTICOTT DESIGN LTD TERMS OF BUSINESS

This Agreement is between us and you subject to these Terms and Conditions and commences on the date that you are first provided with the Services by the Company. Please note that our liability is limited as set out in clause 9 below. Your attention is specifically drawn to this clause prior to entry into the Agreement.

### 1 PAYMENT

- 1.1 All payments must be in UK Pounds Sterling. If your payment is returned by the bank for any reason you will be liable for administration charges.
- 1.2 All charges payable by you for the Services shall be in accordance with the scale of charges and rates notified from time to time by us to you and shall be due and payable in advance of our service provision.
- 1.3 Charges are exclusive of 'Value Added Tax' and we reserve the right to apply this in accordance with UK law on submission by us of a proper VAT invoice.
- 1.4 Where payments are made by direct debit or standing order you agree to execute the necessary authorisations that we may require you to execute to ensure that such payments can be collected from you on our behalf.
- 1.5 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 the provision of Services to you.
- 1.6 We reserve the right to request payment for services in advance by payment of a deposit to us where your request for services is £500 or more.
- 1.7 Where we have asked for payment and monies due are outstanding then we reserve the right before carrying out further work on your behalf to request payment in advance of further services.

### 2 DOMAIN NAMES

- 2.1 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.
- 2.2 You should not assume registration of your requested domain name(s) until you have been notified that it has or they have been registered to you by way of invoice sent by surface postal mail.
- 2.3 Any action taken by you before such notification is at your risk.
- 2.4 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 and charge you for our reasonable costs and expenses in full. 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.
- 2.5 We reserve the right to make a charge for domain transfers away to another.
- 2.6 Where you wish to transfer away your domain then you must give us three months notice in writing of your intention to do so.
- 2.7 You agree that if you request to transfer a domain name to us you are responsible for ensuring that all associated hosting fees are paid for the domain name before and after the transfer takes place, direct to any central registrar, unless you receive a written invoice from us for such fees.
- 2.8 You agree that if you transfer a domain name away from our services to another provider we will not be responsible for paying any domain name fees or renewal fees.
- 2.9 In cases where you request a full transfer away from us you are responsible for making sure that your domain name records have been amended properly and you keep your new provider up to date with your address in order that they can invoice you for such fees.
- 2.10 We will not release or amend any domain name records until full payment for the associated monthly hosting fees have been received by us.
- 2.11 We are under no obligation to remind you when your domain name(s) need to be renewed, nor to invoice you renewal fees, nor to pay your domain name renewal fees when they become due.
- 2.12 If your domain name is registered with us then renewal will take place automatically. However if your domain name is registered elsewhere then it is your responsibility to renew.
- 2.13 You agree to accept responsibility if a domain name lapses for non-payment as a result of your failure to contact us in writing of your desire to renew your registration.
- 2.13 If you fail to pay any part of your annual hosting fees within the agreed credit terms, or if your payment is declined, we will have the right to cancel your domain name, or let it lapse, or at our discretion reserve all proprietary rights to ourselves as we see fit, without further notice to you. In these circumstances you authorise us to act as your agents in removing your details from any domain name records.

### **3 WEB SITE HOSTING AND EMAIL**

- 3.1 We have set no fixed upper limit on the data you can upload or receive through your web site, however, we retain the right, at our sole discretion, to restrict the volume of data transmitted or received by you, or uploaded by you to your web site in order to maintain the quality of our services to other customers and to protect our computer systems.
- 3.2 We, in our sole discretion, will determine whether or not your conduct is consistent with this Agreement and may terminate your Services if your conduct is found to be inconsistent with this Agreement or such rules or policies.
- 3.3 Our Services allow you to store email messages on the Servers. To receive this email you must connect to the internet and use suitable POP3 software (e.g. Microsoft Outlook Express), which you may have to purchase if necessary.
- 3.4 If you transfer your domain name records to a third party for any reason or allow your domain name registration to expire, you will no longer be able to use our email services.
- 3.5 You must keep current backups of any data posted to the Servers. You shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server.
- 3.6 You represent, undertake and warrant to us that you will use our Services for lawful purposes. In particular, you represent, warrant and undertake to us that 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.
- 3.7 You will not:
  - 3.7.1 post, link to or transmit any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;
  - 3.7.2 any material containing a virus or other hostile computer program;
  - 3.7.3 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.
- 3.8 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.
- 3.9 You shall observe the procedures which we may from time to time prescribe and shall make no use of the Server which is detrimental to our other customers.
- 3.10 In the case of an individual user, you warrant that you are at least 18 years of age and if the user is a company, you warrant that the Services will not be used by anyone under the age of 18 years.
- 3.11 While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers.
- 3.12 Pornography and sex-related merchandising are PROHIBITED on any the Servers.
- 3.13 Spamming, or the sending of unsolicited email, from the Server or using an email address that is maintained on a Company machine is STRICTLY PROHIBITED.

### **4 WEB SITE DESIGN SERVICES**

- 4.1 Where you have requested our web site design services you are deemed to have accepted these terms and conditions at the latest when you provide us with the information requested by us to commence our design service for you.
- 4.2 We reserve the right to apply additional charges where your design requirements are unusually complicated. Once we have commenced work on your design you will be deemed to have accepted our proposed fees.
- 4.3 We will seek to obtain your approval for all artwork, design, copy and layouts produced in the provision of our Services. You will be responsible for checking all such materials.
- 4.4 In no circumstances may any work which is unfinished be used, reproduced or published without prior approval from us.

### **5 TRAFFIC POLICY ADDITION**

- 5.1 We reserve the right to charge for the transfer of data to you and any limits and charges will be notified to you in advance.
- 5.2 We reserve the right to change both the transfer limits and prices at any time without notice for bandwidth usage, costs and any other factor which is deemed relevant in relation to usage.

### **6 SERVICE AVAILABILITY**

- 6.1 Our Services are subject to scheduled and unscheduled outages which will impact your ability to use our Services.
- 6.2 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 30 days you will be notified of the reason.

## **7 INTELLECTUAL PROPERTY RIGHTS**

- 7.1 All copyright and intellectual property rights arising in all or any of the work including finished designs created by us shall remain our property until we assign these to you on receipt from you of payment of all fees, costs and expenses which are due to be paid by us to you. Where we have retained intellectual property rights in some cases we may allow you to purchase rights for a design at a price notified to you.
- 7.2 Where intellectual property rights have been agreed to be licensed or assigned then the payment of any fees to us will be deemed to be consideration for such licensing or assignment.
- 7.3 Where you supply any pictures, artwork, photographs, illustrations, texts or fonts to the Company you will be responsible for obtaining all necessary authority for its reproduction.
- 7.4 We will at all times be entitled to use for purposes of promotion any or all parts of commissioned work produced for you or any description or illustration or such work (even if the intellectual property rights have been assigned to you).
- 7.5 At our request you will continue to retain a clear and distinctive credit to us on any work of our design in such manner and form as we will approve.
- 7.6 You shall obtain any and all necessary consents and clearances to enable you lawfully to make use of all and any intellectual property rights through the Services, including without limitation, clearance and/or consents in respect of your proposed domain name.

## **8 PERIOD OF THE AGREEMENT AND TERMINATION**

- 8.1 Where we are supplying you with web hosting services and/or e-mail services and our fees are paid on an annual basis in advance our contract with you will continue for a calendar year from the date of the commencement of the services. Where you wish to terminate this type of contract with us you must provide us with at least 30 days notice of your intention to terminate prior to the end of the term of the contract with us. In then event that a valid notice is not received by us during that period then the contract will be deemed to have been renewed and we will be entitled to collect from you the payment due for the contract for its full term irrespective of whether or not we are supplying services to you during that period.
- 8.2 If you fail to pay any sums due to us as they fall due, we may suspend the Services and/or terminate this Agreement forthwith without notice to you.
- 8.3 If you breach any of these terms and conditions and you fail to correct the breach within thirty (30) days following written notice from us specifying the breach, we may terminate this Agreement forthwith upon written notice.
- 8.4 If you are declared bankrupt, subject to the Mental Health Acts or die or 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 terminate this Agreement forthwith without notice to you.
- 8.5 On termination of this Agreement or suspension of the Services we shall be entitled immediately to block your web site, discontinue your access to your e mail and to remove all data located on it. We shall be entitled to delete all such data but we may, at our discretion, hold such data for such period as we may decide to allow you to collect it at your expense, subject to payment in full of any amounts outstanding and payable to us. We shall further be entitled to post such notice in respect of the non-availability of your web site as we think fit.
- 8.6 On termination of this Agreement all outstanding monies will immediately become due for payment .

## **9 LIMITATION OF LIABILITY**

- 9.1 Except as provided for in this condition 9 neither party will be liable to the other, whether in contract nor otherwise, for any loss or damage which is:
  - 9.1.1 not the fault of the other party;
  - 9.1.2 indirect;
  - 9.1.3 not reasonably foreseeable;
  - 9.1.4 a loss of business profits, savings, revenue use of goodwill or for any loss or corruption of data whether caused to the other party through any breach of these terms and conditions or any matter arising under them.
- 9.2 Subject to condition 9.1 above we limit our legal liability to you up to a maximum of the charges paid by you in respect of the Services per claim or series of claims for any loss or damage which is:
  - 9.2.1 direct financial loss;
  - 9.2.2 direct physical damage to or loss of property resulting from our breach of contract or negligence while providing the Services.
- 9.3 We will not be liable to you if we are unable to perform an obligation or provide the Services to you because of any factor outside our control, including but not limited to acts of god, industrial action or default or action of a third party, war, terrorist act, governmental act, governmental action or by any act or decision made by a court of competent jurisdiction.
- 9.4 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.

- 9.4 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.
- 9.5 In any event no claim shall be brought unless you have notified us of the claim within one year of it arising and you agree that we will not be responsible for any loss or damage that may arise if you fail to take such action.
- 9.6 We will not incur liability for any errors not corrected by you in the proofs or prototypes submitted for approval.
- 9.7 We shall not, in any event, be liable for interruptions of Service or down-time of the Server.
- 9.8 We will not be liable to you for any infringement or alleged infringement of third party industrial or intellectual property rights arising from the incorporation into a project of any material at your request.
- 9.9 We are not responsible for any consequences resulting from your failure to provide notice or receive consent from such individuals nor for your providing outdated, incomplete or inaccurate information.
- 9.10 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.

## **10 INFORMATION AND NOTICES**

- 10.1 You agree to provide current, complete and accurate information about you as required by us and maintain and update this information as needed to keep it current, complete and accurate.
- 10.2 We rely on information you send to us to provide you important information and notices regarding your account and our services. In particular you agree that if you fail to notify us in writing by royal-mail recorded-delivery post of any change of address within four weeks of your change of your address then we have the right to terminate your contract with us forthwith without notice to you. Our address for such notifications is our main place of business as notified to you from time to time.
- 10.3 Any notice to be given by you to us must be sent by recorded delivery to us at the address appearing in this Agreement or ancillary application forms or such other address as we may from time to time have communicated you in writing
- 10.4 Notices sent shall be deemed to be served two days following the date of posting.

## **11 PRIVACY**

- 11.1 We will take all reasonable precautions to protect your personal data from loss, misuse and unauthorised access, disclosure, alteration or destruction.
- 11.2 You represent and warrant that you have provided notice to, and obtained consent from, any third party individuals whose personal data you supply to us as part of our services.
- 11.3 You further agree to provide such notice and obtain such consent with regard to any third party personal data you supply to us in the future.
- 11.4 Subject to the requirements of any privacy statement that we adhere to, in order for us to comply the current rules and policies for the domain name system, you hereby grant to us the right to disclose to third parties through an interactive publicly accessible registration database information that is required to be provided when registering or reserving a domain name with the relevant authority.

## **12 HEADINGS AND INTERPRETATION**

- 12.1 Headings are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.
- 12.2 Where we are agent for the services of a third party the terms of trade of that third party will be deemed to be incorporated into this Agreement and in the event of a conflict between the terms of trade of that third party and this Agreement the terms of that third party will be deemed to apply.

## **13 ENTIRE AGREEMENT**

- 13.1 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.
- 13.2 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.

## **14 RIGHTS OF THIRD PARTIES**

Nothing in these terms and conditions shall confer any rights on a third party to enforce the terms of this contract. The Contract (Rights of Third Parties) Act 1999 does not apply to this contract.

## 15 SEVERABILITY

If any of these terms and conditions are not legally enforceable the other terms will not be affected and we reserve the right to replace the term which is not legally effective with one that is.

## 16 ASSIGNMENT

We may assign our benefits under these Terms and Conditions to a third party or subcontract any of the Services. You may not assign your benefits under these Terms and Conditions to any third party unless we have consented in writing (such consent not to be unreasonably withheld).

## 17 WAIVER AND RELEASE

Any waiver, delay or failure to exercise or enforce any term, right, obligation or condition whatsoever of this Agreement will not be deemed to be a release of any such term, right, obligation or condition.

## 18 LAW

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

## 19 DEFINITIONS

**Company** means Enticott Design Ltd and with its principal place of business at 25 Bramfield Road, London SW11 6RA together with its successors and assignees

**Services** means the provision of web site design, web hosting services, provision of e-mail services, domain registration, support services, extra net, e-commerce, e-marketing more particularly described in the promotional literature of the Company from time to time.

**User** means Customer

**Customer** means person, company or business using the Services

**You and Your** means the Customer

**We, Us and Our** means the Company

**ISP** means Internet Service Provider

**Agreement** means the agreement between the Company and Customer governed by these terms and conditions

**Server(s)** means the computer systems utilised by us to provide the Services

**Terms and Conditions** means these terms and conditions