

# **Web Hosting Terms & Conditions**

Please read these web-hosting terms carefully, as they set out our and your rights and obligations in relation to our web hosting services.

## **AGREEMENT:**

### **Whereas:**

(1) The Ruby Marketers, here after known as “the Host”, is an organisation offering a variety of Internet Marketing services including hosting services to clients using all appropriate hardware providers connected to the World Wide Web via the internet.

(2) The Client wishes to use the Host’s Service to host the Client’s Website and/or selected Internet services on the Hosting Hardware under the terms and conditions of this Agreement.

The Client’s access to and use of the Service constitutes the Client’s acceptance and agreement to be bound by these terms and conditions.

## **1. Definitions and Interpretation**

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“**Account**” means the details of the Client that are required and held by the Host to facilitate the provision of the Service to the Client including, but not limited to, identification and location details, payment details, username and password, and details of the Service provided to the Client;

“**Business Day**” means a day (that is not a Saturday or Sunday) on which banks are open for business in the UK;

“**Client Website**” means the website that the Host is hosting for the Client and refers to all parts of that website including, but not limited to, component files and related services such as email;

“**Fee**” means the sum payable by the Client to the Host in order to receive the Host’s Service;

“**Hosting Hardware**” means all computer and networking equipment used by the Host in the provision of the Service including, but not limited to, servers and network infrastructure;

“**Hosting Package**” means one of the Service packages offered by the

Host and generally refers to the package selected by the Client;

**“Hosting Software”** means all software used by the Host in the provision of the Service;

**Order”** means an order placed by the Client with the Host for the provision of the Service; and

**“Service”** means the collective components of the Host’s hosting service which includes, but is not limited to, the provision of internet connectivity, bandwidth, website storage, software, DNS services, email accounts and data backups, in combination with the Client’s chosen Hosting Package and can refer either to those components as a whole or to specific parts as the context may require.

The clause headings used in this Agreement are used for convenience only and are not intended to affect the meaning or interpretation of the terms of this Agreement.

## **2. Service**

Once the Client’s Order has been placed and processed, the Host will use its best endeavours to commence provision of the Service as soon as reasonably possible. In any event the provision of the Service will commence no later than 10 Business Days after completion and approval of the Client’s Website.

The Host is under no obligation to provide any Service that is not set out in the Client’s Order and the relevant Hosting Package unless the Host and Client enter into a new written Agreement for the provision of additional services.

The Host may, in its sole discretion, alter, improve or otherwise modify the Service provided that any such change will not significantly alter the provision of the Service to the Client or result in the removal of any features or services that form part of the Hosting Package. The Client will be notified no later than 15 Business Days in advance of any planned changes and will receive full documentation of any action required on their part. No alterations to the Service shall affect the Fees payable by the Client.

The Host may take any action necessary to address or repair faults in Hosting Hardware or Host Software without any prior notice to the Client. If such faults or remedial action results in an interruption to the provision of the Service the Client will be notified.

### **3. Availability of Service**

The Host will use its reasonable endeavours to ensure that the Service is provided to the Client on a constant, uninterrupted basis throughout the Term of this Agreement.

Where the Service is unavailable for more than 24 hours the Host will contact the Client and provide reasons for the interruption or, where this is not possible due to an undiagnosed problem, state that the problem is undiagnosed but is being investigated.

Whilst the Host will use every reasonable endeavour to ensure the integrity and security of the Hosting Hardware, the Host does not guarantee that the Hosting Hardware will be free from unauthorised users or hackers and the Host shall be under no liability for non-receipt or misrouting of email or for any other failure of email.

Where Service interruption due to Hosting Hardware failure cannot be remedied within 3 Business Days the Host, with consent of the Client, shall endeavour to transfer the Client's Website to alternative Hosting Hardware in order to restore the provision of the Service.

Where the Client and/or the Client's users are unable to access/use the Client's Website, the Client shall first ascertain whether the inability of access/use is caused by a failure on the part of the Client's and/or its users' internet service provider and/or equipment. After performing these checks the Client shall contact the Host using the following details: Email: [info@therubymarketers.com](mailto:info@therubymarketers.com) or telephone: 01634 823343 or 01634 887282. Where the provision of the Service is interrupted through the fault of any third party, the Host shall bear no responsibility or liability.

Where it is subsequently established that fault does not lie with the Host but with the Client and/or its users' Internet service provider and/or equipment, the Host reserves the right to charge the Client such reasonable cost as the Host may have incurred.

### **4. Fees and Payment**

Fees for the Hosting Packages offered by the Host are as quoted in correspondence or email to the Client. All charges payable by the Client shall be in accordance with the information quoted.

The Client is required to pay all fees due in advance of a 12 month period of Service provision.

For the first 12 months of Service provision, payment of fees due shall form part of the Order process. For all subsequent 12 month periods of Service provision the Client will be sent an invoice and renewal notice 30 Business Days before the 12 month period is due to expire. Payment must be made within 30 days from date of in order for provision of the Service to continue without interruption.

The Host may at any time change the price of its Hosting Packages. The Client will not be subject to any additional charges or refunds during a 12 month period of Service provision. Any change in fees will be reflected in subsequent renewals of Service provision. The Host reserves the right to continue charging old fees for renewals where the new fee is higher.

The Client may, at any time, change their Hosting Package, if the Client chooses to do so. The Client will be invoiced for a new 12-month period of Service provision in accordance with the fees for their new chosen Hosting Package.

All fees payable by the Client to the Host shall be paid in full, without set off or deduction. The Host reserves the right to suspend the Service or cancel the Client's Order if fees are not paid on or before the due date.

Unless otherwise agreed between the parties, the fees shall be paid in accordance with the Host's trading terms and conditions.

All prices quoted by the Host exclude VAT, which will be charged at the then prevailing rate

## **5. Changes to this Agreement**

The Host reserves the right to change the terms of this Agreement and all other terms and conditions and policies which may affect Clients in order to comply with changes in the law.

The Client will be informed of any such changes and shall be deemed to be bound by them 1 calendar month after receiving the notice.

If the Client does not agree to be bound by the changes they may terminate this Agreement in accordance with the Term and Termination clause of this Agreement.

## 6. Client Undertakings and Obligations

The Client may not use the Service or any other Hosting Hardware and Hosting Software for any unlawful or otherwise inappropriate purposes. This includes, but is not limited to:

- Distribution of viruses, spyware, malware, or any other form of code designed to cause harm or nuisance to hardware or software or to obtain data without consent;
- Distribution of pirated material including, but not limited to software, movies, music and written works; and
- Distribution of obscene or illegal material including that which is pornographic, abusive, threatening, malicious, harassing, fraudulent, defamatory or that which encourages criminal activities.
- Distribution of large volumes of unsolicited email ('spam') to recipients. All complaints made to the Host of such activity will be investigated, and may result in immediate suspension or cancellation of service at the Host's sole discretion.
- The Client may not use their website to link to any other sites or systems hosting any material described above.
- Use of the Client's Website in any manner, which is a violation or infringement of the rights of any individual, firm or company within the United Kingdom and elsewhere.
- The Client will monitor and supervise any and all third party activity on their website (including communications systems such as forums). Any third party activity that may fall within the criteria above must be stopped or removed, as appropriate.
- The Client must ensure that any and all activity conducted through the Client's Website in relation to the collection of personal information complies with the provisions of the Data Protection Act 1998.
- The Client must ensure that any and all activity conducted through the Client's Website in relation to selling complies with the provisions of the Distance Selling Regulations 2000.
- The Client is responsible and accountable for all activity relating to their website and the Service that is carried out by third parties on their behalf.

- The Client will use its best and reasonable endeavours to supply all information required to facilitate the provision of the Service to the Host in a timely fashion.
- The Client recognises that available bandwidth is limited, and that the Host may limit access to any large amounts of material made available through the Service in order to maintain a reasonable level of service to the Host's other clients. Any such action will be notified to the Client within 14 days of its implementation.

## **7. Intellectual Property and Proprietary Rights**

The Client will not acquire ownership rights over any of the Host's Intellectual Property in or in relation to the Service or in relation to any other property owned by the Host.

The Host will not acquire ownership rights over any of the Client's Intellectual Property in the Client's Website or any other material belonging to the Client.

In consideration of the Fees and Payment paid in full by the Client to the Host, the Host grants to the Client a non-exclusive licence to use any Hosting Software issued and authorised by the Host for use by the Client for the Client's Website.

The Client may not use the Hosting Software for any other purpose other than as specified in this Agreement without the prior written consent of the Host and the Client acknowledges that additional fees may be payable on any change of use approved by the Host.

The Client agrees to fully indemnify the Host against all costs, expenses liabilities, losses, damages, claims and judgments that the Host may incur or be subject to as a result of the infringement of any Intellectual Property infringement owned by third parties arising from:

The Client's will obtain the necessary rights and permissions from third parties in order to enable the Host to legally provide the Service;

The provision of the Service by the Host based upon information and material provided by the Client.

## **8. Liability**

The Host shall not be liable to the Client or to third parties for:

- Any losses resulting from interruptions or downtime to the Service; Any inability, on the part of the Client, to use the Service;
- Any damage or loss resulting from the loss of confidentiality caused by the storage of information on the Internet.

Nothing in this Clause shall exclude the liability of the Host for death or personal injury resulting from the Host's negligence or that of its employees or agents.

Nothing in this Clause or in this Agreement shall exclude the liability of the Host for fraudulent misrepresentation.

## **9. Warranty Disclaimer**

Subject to the provisions of this Agreement, the Host gives no warranty, express or implied, in connection with the Service as to fitness for purpose, quality, non-infringement or merchantability.

## **10. Indemnity**

The Client will fully indemnify the Host against all costs, expenses, liabilities, losses, damages and judgments that the Host may incur or be subject to as a result of any of the following:

- The Client's misuse of the Service;
- The Client's breach of this Agreement;
- The Client's negligence or other act of default;
- The Activities of third parties conducted on the Client's website using facilities such as blogs, forums and chat.

## **11. Force Majeure**

Neither the Host nor the Client shall be liable for breaching this Agreement where that breach results from Force Majeure.

Force Majeure refers to any event that is beyond the reasonable control of the parties and includes, but is not limited to, acts of God; acts of war; national emergencies; governmental action; union action; civil unrest; fire; explosion; flood and theft.



## 12. Term and Termination

The initial period of Service provision will commence on the date that the Client's Website goes live or the Client's Order is processed. This term shall last for a period of 12 months, subject to the termination provisions below.

Subsequent periods of Service Provision shall last for a period of 12 months each and will follow on from a previous period, without interruption, subject to the fulfilment of the Client's obligations under the Fees and Payment Clause of this Agreement. All subsequent periods are subject to the termination provisions below.

The Host reserves the right to terminate this Agreement at any point with one month's notice at the host's discretion, or The Host reserves the right to terminate this Agreement or to suspend the Service in the following circumstances:

- If the Client fails to pay fees due under the Fees and Payment Clause of this Agreement;
- If the Client is in breach of the terms of this Agreement;
- If the Client becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
- If the Client is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or
- If the Client has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.

The Client may request the termination of the Service and this Agreement by written notice, 1 month in advance. The following shall apply to such situations:

Any issuing of refunds is at the sole discretion of the Host.

If the Client wishes to terminate during the course of a 12-month period of Service provision the Service will end 1 month after the Host receives the Client's notice.

On termination of the Service and this Agreement the Client's Website and all related material will be removed from the Hosting Hardware.

If the Client sends a termination notice in error or changes their mind, the Host must be informed within 2 months of the notice that the Client wishes their Account to be restored. Any notification outside of this period will require a new Account to be set up, with the Client being required to pay for a full 12-month period. The Client will be required to pay a re-activation fee of £100.00 plus VAT

### **13. Assignment**

The Host reserves the right to assign or otherwise transfer any rights or obligations under this Agreement.

The Client may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Host.

#### **General**

In the event that any provision of this Agreement is found to be invalid or otherwise unenforceable for any reason, the remaining provisions shall continue in full force without being impaired or invalidated in any way. The waiver by either party of any provision of this Agreement will not operate or be interpreted as a waiver of any other provision or a subsequent breach of any provision.

Any notice given under the Agreement must be in writing (whether or not described as “written notice” in the Agreement) and must be delivered personally or sent by pre-paid first class post, to the attention of the relevant person, and to the relevant address.

A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) where the notice is delivered personally, at the time of delivery;
- (b) where the notice is sent by first class post, 48 hours after posting; and

No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

The Agreement may not be varied except by a written document signed by or on behalf of each of the parties

The Host may freely assign its rights and obligations under the Agreement without the Client's consent. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.

The Host may subcontract any of its obligations under the Agreement to any third party.

Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.

The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.

#### **14. Law and Jurisdiction**

This Agreement is governed by the laws of England and Wales. Any dispute relating to this Agreement shall fall within that jurisdiction.

#### **15. Confidentiality**

Both parties shall keep in strict confidence all information which are of a confidential nature and have been disclosed by one party to the other party and shall procure that the receiving party's employees, agents, consultants or subcontractors keep in strict confidence all such information other than for the purposes of performing its obligations under this Agreement.