



Web Hosting Terms of Service

This Terms of Service should be read in conjunction with our Acceptable Use Policy.

DEFINITIONS

“Agreement” shall refer to the agreement between Clever Monkey Web and the Customer for the provision of Services by Clever Monkey Web to the Customer;

“Bandwidth” shall refer to the rate of data transmission in bits per second, using Clever Monkey Web equipment;

“Confidential Information” shall refer to information which is identified as confidential or proprietary by either party or the nature of which is clearly confidential or proprietary;

“Customer” shall refer to You, an individual or entity which has accepted these Terms of Service;

“Fees” shall refer to the fees for the Services, the pricing of which is as shown on clevermonkeyweb.com;

“Intellectual Property Rights” shall refer to any and all patents, trademarks, service marks, copyright, know-how, design rights, or any other intellectual or similar rights, whether or not registrable in any country, together with all or any goodwill relating to the same;

“Services” shall mean hosting;

“You”;; “Your”; and grammatical variants thereof shall mean you, any other entity which has an ownership or other beneficial interest in you, or any other entity in which you have an ownership or beneficial interest.

1. SERVER USE

1.1 Clever Monkey Web does not allow any of the following content to be stored on its servers: Illegal Material – This includes copyrighted works, commercial audio, video, or music files, and any material in violation of any UK legislation. 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 Clever Monkey Web.



Clever Monkey Web does not allow pirated software, ROMS, emulators, hacking, password cracking, IP spoofing, etc., and encrypting of any of the above. This also includes any sites which provide “links to” or “how to” information about such material.

2. UNRESTRICTED BANDWIDTH POLICY

2.1 High Bandwidth usage: Clever Monkey Web offers an unrestricted use policy by maintaining very large ratios of Bandwidth per customer. In rare cases, Clever Monkey Web may find a customer to be using server resources to such an extent that he or she may jeopardize server performance and resources for other customers. In such instances, Clever Monkey Web reserves the right to impose the High Resource User Policy for the consideration of all customers.

3. HIGH RESOURCE USER POLICY

3.1 Resources are defined as Bandwidth, processor utilization or disk space. Clever Monkey Web may implement the following policy to its sole discretion: when a website is found to be monopolizing the resources available, Clever Monkey Web reserves the right to suspend that server immediately. This policy is only implemented in extreme circumstances and is intended to prevent the misuse of our servers.

4. FEES & PAYMENT TERMS

4.1 All Fees for Services are payable in advance and are non-refundable;

4.2 All Fees must be paid in UK Pounds Sterling;

4.3 Although Clever Monkey Web reserves the right to change the prices for the Services at any time, all pricing is guaranteed for the period of the prepayment. Any changes to the prices of Services will be clearly communicated to Customers prior to their application, with one month's notice being given for such changes. Notice will be served via email, to the primary email address held on the Customer's Clever Monkey Web account;

4.4 Any additional hosted domains will be cancelled if the primary hosting package fees are not paid regardless of the additional hosted domains invoice and/or renewal date;



5. TERM & TERMINATION

5.1 The term of service for all annually billed Services is annual, and the term of service for all biennially billed Services is biennial;

5.2 The term of service for all monthly billed Services, is monthly;

5.3 Clever Monkey Web reserves the right to terminate a Customer's Agreement at any time. In this event, You will be entitled to a pro-rata refund based on the unexpired term of service, unless You have contravened these Terms of Service, in which case You may not be entitled to a refund;

5.4 Clever Monkey Web shall have the right to terminate this Agreement immediately should the Customer fail to make advance payment for any Service, when such payment becomes due to Clever Monkey Web;

5.5 Either party may terminate this Agreement by giving notice in writing to the other party if the other party (i) is in material breach of this Agreement and fails to remedy such breach within 30 days of the receipt of a request in writing to remedy such breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of the Agreement, (ii) becomes the subject of a voluntary arrangement under Part 1 of the Insolvency Act 1986, (iii) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, (iv) has a receiver, liquidator or administrator appointed over all or part of its assets or income or (v) has ceased to trade.

6. CANCELLATION

6.1 Customers may not cancel their Service(s) during the term of service

6.2 Customers will not be entitled to cancel any Service if there are outstanding payments associated with that Service.

7. DISCLAIMERS AND WARRANTIES

7.1 Unless you have entered into a separate maintenance contract with Clever Monkey Web, we do not back up Your data/website and whilst every attempt would be made in the unlikely event of any corruption or hardware failure, Clever Monkey Web cannot guarantee to be able to replace lost data. This includes loss of



data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Clever Monkey Web and its employees;

7.2 Clever Monkey Web makes no warranties or representations that any service will be uninterrupted or error-free. You accept all services provided hereunder “as is” without warranty of any kind;

7.3 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;

7.4 Clever Monkey Web shall not be liable for any services or products to be supplied by any third party;

7.5 Clever Monkey Web shall not be liable for any loss or damage of whatsoever nature suffered by You arising out of or in connection with any breach of this Agreement by You or any act, misrepresentation, error or omission made by You or on Your behalf;

7.6 Clever Monkey Web will not be liable for any indirect loss, consequential loss, loss of profit, revenue, data or goodwill howsoever arising suffered by You or for any wasted management time or failure to make anticipated savings or liability You incur to any third party arising in any way in connection with this Agreement or otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss;

7.7 No matter how many claims are made and whatever the basis of such claims, Clever Monkey Web’s maximum aggregate liability to You under or in connection with this Agreement in respect of any direct loss (or any other loss to the extent that such loss is not excluded by other provisions in this Agreement) whether such claim arises in contract or in tort shall not exceed a sum equal to twice the fees paid by You for the services in relation to which Your claim arises during the 12 month period prior to such claim;

7.8 None of the clauses herein shall apply so as to restrict liability for death or personal injury resulting from the negligence of Clever Monkey Web, its employees or its sub-contractors;

7.9 Clever Monkey Web shall not be liable for any interruptions to the services or outages arising directly or indirectly from (i) interruptions to the flow of data to or from the internet, (ii) changes, updates or repairs to



the network or software which it uses as a platform to provide the services, (iii) the effects of the failure or interruption of services provided by third parties, (iv) factors outside of Clever Monkey Web's reasonable control, (v) Your actions or omissions (including, without limitation, breach of Your obligations set out in the Agreement) or those of any third parties, (vi) problems with Your equipment and/or third party equipment, or (vii) interruptions to the services requested by You.

8. INDEMNIFICATION

8.1 You agree that You shall defend, indemnify, save and hold Clever Monkey Web, its officers, employees, agents, sub-contractors and affiliated companies harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against Clever Monkey Web, its agents, its customers, officers and employees, that may arise directly or indirectly as a result of any service provided or performed or agreed to be performed or any product sold by You, Your agents, employees or assigns;

8.2 You agree to defend, indemnify and hold harmless Clever Monkey Web against liabilities arising out of (i) any injury to person or property caused by any products sold or otherwise distributed in connection with a Clever Monkey Web server, (ii) any material supplied by You infringing or allegedly infringing the proprietary rights of a third party, (iii) Intellectual Property Right infringement, (iv) any defective products sold by You from a Clever Monkey Web server, and (v) any breach of any of Your obligations or the warranties given by You in this Agreement.

9. FORCE MAJEURE

9.1 Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supranational authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorized use or access to the IT systems of Clever Monkey Web or the Customer, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.



10. ENTIRE AGREEMENT

10.1 This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and neither relied on any representation made by the other party unless such representation is expressly included herein;

10.2 Nothing in this clause shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance on the same as being fair and reasonable;

10.3 This Agreement supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

11. SEVERABILITY

11.1 In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole;

11.2 Clever Monkey Web will amend or replace such provision with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of Clever Monkey Web as reflected in the original provision.

12. CONFIDENTIALITY

12.1 Each of the parties agrees not to disclose any Confidential Information received from the other party or make any use of any such Confidential Information other than for the purposes of performance of this Agreement, except that (i) each party may disclose Confidential Information received from the other to its responsible employees, consultants, sub contractors or suppliers who need to receive the information in the course of performance of this Agreement, (ii) the confidentiality obligations set out above shall not apply to any information which is or subsequently becomes available to the general public other than through a breach by the receiving party, or is already known to the receiving party before disclosure by the disclosing party or is developed through the independent efforts of the receiving party, or (iii) the receiving party



rightfully receives from a third party without restriction as to use.

13. WAIVER

13.1 The failure or delay by either party in exercising any right, power or remedy of that party under the Agreement will not in any circumstances impair such right, power or remedy, nor operate as a waiver of it;

13.2 The single or partial exercise by either party of any right, power or remedy under the Agreement will not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

13.3 Any waiver by either party of a breach of or default under any of the terms of the Agreement by the other party is not deemed a waiver of any subsequent breach or default and in no way affects the other terms of the Agreement.

14. ASSIGNMENT

14.1 You shall not assign, sub-license or transfer Your rights or obligations under this Agreement to any third party without the prior written consent of Clever Monkey Web. However, in the event that Clever Monkey Web consents to such an assignment, sub-license or transfer, then this Agreement shall endure to the benefit of and be binding upon the parties and their respective successors and permitted assigns;

14.2 Clever Monkey Web may sub-contract or assign any or all of its rights and obligations under this Agreement.

15. AMENDMENTS

15.1 This Agreement may not be amended or modified by You except by means of a written document signed by both You and an authorized representative of Clever Monkey Web.

16. NOTICES

16.1 You agree that any notice or communications required or permitted to be delivered under this Agreement by Clever Monkey Web to You shall be deemed to have been given immediately if delivered by



e-mail or 24 hours after dispatch if sent by overnight mail in accordance with the contact information You have provided.

17. GOVERNING LAW

17.1 This Agreement, and Your rights and obligations under this Agreement, shall be governed by the laws of Wales, subject to the exclusive jurisdiction of the courts of England and Wales.

18. EMAIL

18.1 You may not use Clever Monkey Web servers and Email services for any of the following: (i) to send messages or communications, which are unsolicited, offensive, abusive, indecent or obscene; (ii) to send messages causing annoyance, inconvenience or anxiety to another user of the internet or (iii) to send messages for the purpose of fraud and /or with the intention of committing a criminal offence;

18.2 To prevent the sending of bulk unsolicited mail, SMTP traffic to and from a server will be blocked in the following scenarios: (i) where we identify a server that has an open mail relay; (ii) where a significant volume of mail is sent from a domain in a 10 minute period or (iii) where we have received significant volumes of complaints concerning unsolicited mail originating from a Clever Monkey Web hosted server;

18.3 To prevent Clever Monkey Web's IP addresses being blocked by IP address blocking, Your server may be disabled where we have received significant volumes of complaints concerning unsolicited mail originating from a Clever Monkey Web server, or unsolicited email being sent to promote sites being hosted on a Clever Monkey Web server;

19. GENERAL

19.1 If Clever Monkey Web disables a server, we will: (i) provide follow up correspondence during office hours, detailing the reasons for the suspension and what actions, if any, the administrator should take to rectify the situation; (ii) work with You to suggest a resolution to the issue at hand and arrange for the restoration of Services in the shortest timescale possible once an agreement has been reached; (iii) not re-enable any server that has a history of similar misuse; (iv) pass the account to the appropriate department to resolve any outstanding issues such as account balance or closure;



19.2 If an action is taken against a site or server, You should communicate directly with us within office hours;

19.3 Restoration of any and all Services suspended during a misuse investigation will be considered on a case-by-case basis;

19.4 Clever Monkey Web are committed to assisting and cooperating with all law enforcement and government agencies in helping to reduce internet crime.

20. REPORTING MISUSE

20.1 In order to efficiently process Your report we need You to send as much information as possible and Your contact email address and phone number. Below are the details that we will need from You when investigating internet misuse. Reports will not be investigated until the details below have been received. If any of the information below is missing from Your report, please re-send the information;

20.2 Reporting port scanning, attempted hacking and firewall activity: (i) where Your report is based upon information obtained from a firewall, please ensure that You send the relevant unedited firewall log (or excerpt). Please ensure that the log includes the time, date and time zone; (ii) You also need to confirm that the clock on Your PC is accurate and that You are using the correct time zone for Your locale; (iii) Screenshots or image files will not be accepted as evidence of a system intrusion; (iv) If You see any other misuse on Your own servers originating from a Clever Monkey Web IP address, then please send us the following information: Your URL, our web server log (showing the IP address, time, date and time zone of the IP address logging into Your server), and any details of the misuse that has taken place.

20.3 Reporting email/ newsgroup misuse (including spam): (i) We require the full header and content of the email/ newsgroup post. The header enables us to trace the journey that an email/ newsgroup post has made from the computer it originated from to the computer it was downloaded to;

20.4 Reporting virus activity: (i) If You have received or been infected by a virus, worm or Trojan please note that Clever Monkey Web are unable to offer any support in their removal. We recommend that you install anti-virus software and ensure that it is updated regularly; (ii) please include the following information in your complaint: the header of the email (if one is available) and the content of the email; (iii) the email attachment that was sent to You (if any). The attachment may need to be placed in an archived file (.zip, .rar etc) for our



email software to receive it. If You cannot attach the virus, then please send the email and header only;

20.5 Reporting web space abuse: (i) If You become aware of any server hosted by Clever Monkey Web that you feel is in contravention of our Terms of Service or our Acceptable Use Policy, then please email us with the details; (ii) please send the following information: the URL, the time and date that You noticed the infringement, any details regarding how You came to view the material, and a precise description of why You believe the domain to be in breach;

20.6 Clever Monkey Web actively reports any illegal activities that take place on our servers to the police. Clever Monkey Web also work with the Internet Watch Foundation to ensure that any images of child abuse are removed from our service and reported as soon as we are made aware, in line with current working practices.

21. DOMAIN NAME REGISTRATIONS

21.1 By registering a .uk domain name, You enter into a contract of registration with Nominet, on the following terms and conditions, at <http://www.nominet.org.uk/registrants/aboutdomainnames/legal/terms/> and <http://www.nominet.org.uk/registrants/aboutdomainnames/rules/>. This is a separate contract to any arrangement You may have with any third party for the provision of Services. Please read the Nominet terms before proceeding with your order;

21.2 By registering any domain other than a .uk domain, You enter into a contract of registration with the relevant registry.