

Clarke Design – WEB HOSTING SERVICES AGREEMENT

This Web Hosting Services Agreement (the "Agreement") is entered into by and between Clarke Design with its principal office at Drayton Court, Drayton Road, Shirley, Solihull, West Midlands B90 4NG (hereinafter referred to as "Clarke Design"), and the recipient client (hereinafter referred to as "Client").

ARTICLE 1 CONSIDERATION, INVOICING AND PAYMENT

- 1.1 Hosting Services Client shall pay Clarke Design for the hosting account on a prepay basis at the rates set forth in the corresponding Proposal / Task Order. Although Clarke Design reserves 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 calendar month or calendar year, 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.
- 1.2 Invoicing All invoices will be sent directly to customers by either email or regular mail shortly after the hosting package has been purchased. All payments and invoices are in UK sterling.
- 1.3 Payment Terms Client shall pay Clarke Design the amount of each invoice in U.K. sterling, within thirty (30) days of the date of each invoice. In the event that Client fails to pay any amount due under this Agreement within the above period, Client shall pay Clarke Design interest on the amount due at the rate of ten percent (10%) of the total invoice per calendar month or part calendar month (or the maximum amount allowable under any applicable law if such amount is less than ten percent (10%) per calendar month).
- 1.4 Non payment Clarke Design reserves the right to suspend web hosting services until an 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 termination request.
- 1.5 Remittance Address Client shall remit all payments to the following:

Payment by Cheque:

Clarke Design,
Drayton Court,
Drayton Road,
Shirley, Solihull,
West Midlands B90 4NG

*Cheques to be made payable to
Clarke Design*

ARTICLE 2 DOMAIN REGISTRATION

- 2.1 Registration The contract for the registration is between client and the associated naming authority. Clarke Design acts only as the interim agent on behalf of Client for domain registration.
- 2.2 Naming Authority Client is bound by the terms and conditions of the associated naming authority. It is the responsibility of Client to obtain and be familiar with these terms and conditions.
- 2.3 Guarantee Clarke Design cannot guarantee that a requested name can be registered and until Clarke Design has provided confirmation of the registration, client must not assume that registration has been effected.
- 2.4 Warranty Clarke Design provides no warranty that the domain name will not infringe the rights of any third party and that Client indemnifies Clarke Design in respect of any such infringements.

ARTICLE 3 WEB SITE USAGE

- 3.1 Usage Web hosting accounts are to be used by the primary owner only. Personal account holders are not permitted 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. Exceptions to this include ad banners, classified ads, and personal ads.
- 3.2 Forbidden Content Clarke Design do not allow any of the following content to be stored on the web servers provided by our

web hosting packages: Adult material, warez, illegal material; this includes copyrighted works, commercial audio, video, or music files, and any material in violation of any Federal, State or Local law.

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 Clarke Design.

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.

- 3.3 Unlimited use Policy Clarke Design offers an unlimited use policy by maintaining very large ratios of bandwidth per customer. In rare cases, Clarke Design may find a customer to be using server resources to such an extent that they may jeopardise server performance and resources for other customers. In such instances, Clarke Design reserves the right to impose the High Resource User Policy for the consideration of all customers.
- 3.4 High Resource User Policy Resources are defined as bandwidth and/or processor utilisation. Clarke Design may implement the following policy to its sole discretion: When a website is found to be monopolising the resources available Clarke Design reserves the right to suspend that site immediately. This policy is only implemented in extreme circumstances and is intended to prevent the misuse of our servers. Customers may be offered an option whereby Clarke Design continues hosting the website for an additional fee.

ARTICLE 4 TERMINATION

- 4.1 Inappropriate usage Clarke Design reserves the right to suspend or cancel a customer's access to any or all services provided by Clarke Design when Clarke Design decides that the account has been inappropriately used or otherwise.
- 4.2 Termination Either party may terminate this Agreement upon giving at least thirty (30) days prior written notice to the other party of its intent to terminate this Agreement. Notwithstanding the foregoing, Client may not terminate this Agreement while any Proposal / Task Order is incomplete or outstanding or whilst any invoices remaining outstanding or unpaid.
- 4.3 Payment after Termination In the event of termination pursuant to Section 4.1 above, Client shall pay Clarke Design pursuant to ARTICLE 1 for all amounts due through the date of termination. If this Agreement is terminated prior to the completion of any Proposal / Task Order, Clarke Design shall (i) immediately cease such work as directed in the notice of termination, (ii) inform Client as to the current state of performance of the services under such Proposal / Task Order; and (iii) deliver to Client an invoice for the services actually performed along with all Client proprietary information in its possession and all deliverables in whatever state of development they may exist on the date of termination.
- 4.4 Prepayment Fees are charged on a prepayment basis are non-refundable. Customers are not entitled to receive a refund unless the service is cancelled by Clarke Design. In addition some accounts may incur set-up fees, these charges are also non-refundable.

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ARTICLE 5 DISPUTES AND ARBITRATION

- 5.1 Arbitration The parties agree to exercise their best efforts to settle all disputes arising from or relating to this Agreement by mutual Agreement (“disputes”). In the event that a dispute is not settled within thirty (30) days from the date that a party notifies the other party of a dispute, below, such unsettled dispute shall be settled by binding arbitration under the commercial arbitration laws of the United Kingdom; Any unsettled dispute shall be submitted to one (1) arbitrator. Each party shall bear its own costs of the arbitration and shall bear one-half of the arbitrators’ costs.

ARTICLE 6 MISCELLANEOUS

- 6.1 Independent Contractor Clarke Design shall, for all purposes of this Agreement, be an independent contractor, and not an agent, partner, or joint venturer of Client. Clarke Design shall not act or represent itself as having power to bind Client, or create any obligation on behalf of Client, except as expressly set forth in this Agreement.
- 6.2 Indemnification Customer agrees that it shall defend, indemnify, save and hold Clarke Design harmless from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees asserted against Clarke Design, 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 Clarke Design against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Clarke Design’s web hosting; (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 Clarke Design’s web hosting package.
- 6.3 Notices All notices pertaining to or required by the Agreement shall be in writing, signed by an authorised representative and delivered by hand or mail to the principal office of Clarke Design.
- 6.4 Amendments This Agreement may be modified only by a written amendment executed by a duly authorised representative of each party.
- 6.5 Headings Titles and headings of the Articles of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation of this Agreement.
- 6.6 Construction This Agreement shall be construed in accordance with the plain meaning of the language contained in this Agreement, and it shall not be construed either for or against the drafting party.

- 6.7 No Waiver None of the provisions of this Agreement shall be considered waived by either party hereto unless such waiver is given in writing to the other party. The failure of either party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of either party hereto. A waiver by either party of any of the obligations to be performed by the other party or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other obligation contained in this Agreement.
- 6.8 Limitation of Liability Notwithstanding anything contained in this Agreement to the contrary, in no event shall Clarke Design be liable for lost profits of Client, or incidental, consequential, indirect, exemplary, or special damages (even if Clarke Design has been advised of the possibility of such damages) arising from this Agreement, the use of a Deliverable, or from any claim by any third party. Clarke Design’s total liability to Client under this Agreement for damages, costs, and expenses, regardless of cause, shall not exceed the total amount of fees paid to Clarke Design by Client under the associated Proposal / Task Order.
- 6.9 Warranties and Representations Clarke Design warrants and represents that (a) it will not knowingly infringe upon any copyright, patent, trade secret or other intellectual property right of any third party in performance of this Agreement; and (b) it will perform the services by providing only qualified personnel, consistent with the Proposal / Task Order, using good consulting practices, and the state of the art involved. THE WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REPRESENTATIONS GRANTED BY CLARKE DESIGN WITH RESPECT TO THE SERVICES AND DELIVERABLES PROVIDED UNDER THIS AGREEMENT. CLARKE DESIGN HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 6.10 Proper Law of Contract This contract is subject to the Law of England and Wales
- 6.11 Statutory Rights These terms and conditions herein do not affect the statutory right of Client.
- 6.12 Entire Agreement The Parties acknowledge that this Agreement and its exhibits sets forth the entire Agreement and understanding of the parties as to the subject matter contained in this Agreement, and shall not be subject to any change or modification except by a written amendment executed by an authorised representative of each party. This Agreement supersedes any and all prior conditions, commitments, and Agreements, either oral or written.