



HOSTING SERVICES TERMS OF USE

These are the terms and conditions (**Terms**) on which FAB Creative Media (hereafter referred to as **we**, **us** and **our** where the context requires) will provide hosting services to **you** (**Services**). Our **contact details** for written correspondence is FAB Creative Media, 222, Bradford Road, Clayton, Bradford, West Yorkshire, BD14 6BZ; or call us on +44 (0)7833 626695; or email support@fabcreativemedia.com.

By using our Services, you agree to comply with and be bound by these terms, which includes any policies referred to within. All policies are available from **our site** at <https://www.fabcreativemedia.com/> or hard copies can be obtained by contacting us on the above contact details.

1. Our Agreement

- 1.1. You agree that we may modify these Terms (and the Services we provide to you) from time to time to make improvements. You agree to be bound by such changes that we may reasonably make to these Terms when such changes are made. If the change to these Terms (or the Services provided to you) materially affects you, we shall notify you by email and provide you with an option to cancel.
- 1.2. The contractual term of this agreement shall continue in full force and effect for as long as you have purchased the Services from us, regardless of whether or not the Services are being used by you or any other person or party.
- 1.3. You warrant to maintain accurate information while you are using the Services. You will notify us within five (5) business days of a change to the information you provided as part of the application and/or registration process. Failure by you, for whatever reason, to respond within five (5) business days to any inquiries made by us to determine the validity of information provided by you will constitute a material breach of these Terms. If you provide any information that is inaccurate, not current, false, misleading or incomplete, or if we have reasonable grounds to suspect that the information supplied by you is inaccurate, not current, false, misleading or incomplete, we shall have the absolute right, in our sole discretion, to terminate the Services provided to you and close your account.

2. Fees and Subscription

- 2.1. The fees for our Services are payable on a monthly or yearly basis starting one (1) month or year from the date you purchase the Services from us and will be collected by charging the debit or credit card that you used when submitting your order (or other method agreed by us in writing). You consent and accept that you are providing the continuous authority for us to charge you in accordance with this clause 2.1.
- 2.2. We reserve the right to adjust our fees at any time and by any amount, however, any change to the fee will not affect the current subscription period and will only apply upon commencement of the next subscription period subject to clause 2.3 and 2.4 (**Renewal**).
- 2.3. We shall in all cases give one (1) months' notice of any change to the fee. If the commencement of the next subscription period falls within the one (1) months' notice period, we shall apply the fee change on the following period after Renewal.

- 2.4. Upon giving notice of a fee change, we shall offer you the right to cancel your subscription within 30 days of the email notice. If you choose to cancel, you must do so in writing and your access to the Services will expire at the end of the subscription period.
- 2.5. If we are unable to collect the fees, we shall invoice you and you must pay the fees due within 30 days from the date of the invoice. If you do not pay within 30 days and without prejudice to any other rights under this agreement:
- a) we may, without liability to you, disable your account and access to all or part of the Services and we shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 2.6. All fees shall be in pounds sterling, non-refundable are exclusive of Value Added Tax (VAT). If VAT should become payable, we shall add this amount in accordance with the fee change procedure set out in clause 2.2.
- 2.7. Setup fees, domain name registration and renewal fees, domain name redemption fees, handling fees, the cost of service add-ons, overage fees, and any penalty fees (e.g. chargeback fees or any other fee assessed to us in connection with collecting payment) are non-refundable. In addition, no refund will be issued for any account closed due to a breach of these Terms.

3. Our Services

- 3.1. We undertake that the Services will be performed with reasonable skill and care, however, this undertaking shall not apply to any use of our Services that is not in conformance with our written instructions (whether pursuant to clause 4 or otherwise). If the Services are not performing as expected (in our determination) then we shall use all reasonable commercial endeavours to correct such performance subject to any breach of these Terms.
- 3.2. Notwithstanding clause 3.1, the Services are provided “as is” and:
- a) we do not warrant that your use of the Services will be uninterrupted or error free; and
 - b) we shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such.

4. Your Obligations

- 4.1. You agree and undertake not to engage in unacceptable use of the services, which includes, without limitation, using (or permitting a third party to use, and any reference to **you** or **your** in this clause 4 shall be interpreted to include any such third party) the Services to:
- a) disseminate or transmit unsolicited messages, chain letters, unsolicited commercial email or unreasonably large volumes of email on a daily basis, except in the case of our written consent and provided always that use is for a legitimate purpose;

- b) disseminate or transmit any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious;
- c) disseminate or transmit files, graphics, software or other material, data or work that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person;
- d) create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication;
- e) export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction without all required approvals, licenses and/or exemptions where applicable;
- f) interfere, disrupt or attempt to gain unauthorised access to any computer system, server, network or account for which you do not have authorisation to access or at a level exceeding your authorisation;
- g) disseminate or transmit any virus, trojan horse or other malicious, harmful or disabling data, work, code or program;
- h) employ posts or programs which consume excessive CPU time or storage space; permits the use of mail services, mail forwarding capabilities, POP accounts, or auto responders other than for your own account;
- i) engage in any other activity deemed by us to be in conflict with the spirit or intent of these Terms or any policy in force from time to time;
- j) use the Services as an "open relay" for similar purposes. This includes but is not limited to pirated software, hacking programs or archives, warez, TOR relays; IRC scripts/bots; IRCD (IRC servers); proxy scripts/anonymizers; image hosting scripts (similar to Photobucket or Tinypic); AutoSurf/PTC/PTS/PPC sites; IP scanners; bruteforce programs/scripts/applications; mail bombers/spam scripts; banner-ad services (commercial banner ad rotation); file dump/Mirror scripts (similar to rapidshare); commercial audio streaming (more than one or two streams); escrow/bank debentures or bank debenture trading programs; high-yield interest programs (HYIP) or related sites; investment sites (e.g. FOREX, EGold Exchange, Second Life/Linden Exchange, Ponzi, MLM/Pyramid Scheme); sale of any controlled substance without prior proof of appropriate permits/licences; prime banks programs; lottery/gambling sites; MUDs/RPGs/PBBGs; hacker focused sites/archives/programs; fraudulent sites (including, but not limited to sites listed at aa419.org & escrowfraud.com); push button mail scripts; broadcast or streaming of live sporting events; "tell a friend scripts"; anonymous or bulk SMS gateways; websites advertised via SPAM ("Spamvertised"); organization, entities or websites listed in the ROKSO database; PayDay loan sites (including any site related to PayDay loans, PayDay loan affiliate programs, etc); or mailer pro, and we shall be the sole arbiter as to what constitutes a breach of this clause j.

4.2. Any breach of this clause 4 shall be deemed to be a material breach of these Terms and the Services provided to you will be terminated immediately and all payments forfeited.

5. Your Content

5.1. You shall bear the full risk of loss and damage to your content at all times and you are entirely responsible for maintaining the confidentiality of your password and account information. You acknowledge and warrant that you are solely responsible for all acts, omissions and use of (or in connection with) your account or password including, but not

limited to, your content as displayed, linked, transmitted through or stored on the server. You shall be solely responsible for undertaking measures to:

- a) prevent any loss or damage to your server content;
 - b) maintain independent archival and backup copies of your server content;
 - c) ensure the security, confidentiality and integrity of your server content whether transmitted through or stored on our servers; and
 - d) ensure the confidentiality of your password.
- 5.2. Our servers are not an archive and we shall have no liability to you or any other person for loss, damage or destruction of any of your content. The services offered by us are not intended to provide a PCI (Payment Card Industry) compliant environment and therefore should not be utilised as such without further compliance activity.

6. Personal Data and Privacy

- 6.1. Both parties will comply with all applicable requirements of the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 (Data Protection Legislation). This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. All capitalised terms in this clause 6 shall have the meaning attributed to them by the Data Protection Legislation.
- 6.2. Under these Terms you acknowledge that you are the Data Controller and we are the Data Processor. Our Privacy Policy (available on request) sets out the scope, nature and purpose of processing by us, the duration of processing, the types of Personal Data and categories of Data Subject.
- 6.3. Without prejudice to the generality of clause 6.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of these Terms.
- 6.4. Without prejudice to the generality of clause 6.1, we shall, in relation to any Personal Data processed in connection with us performing the Services:
- a) process that Personal Data on your written instructions only unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process Personal Data (Applicable Laws). Where we are relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from notifying you;
 - b) ensure that appropriate technical and organisational measures are in place, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- d) not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:
 - i. appropriate safeguards in relation to the transfer have been put into place;
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. all obligations under the Data Protection Legislation are satisfied by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. all reasonable instructions notified to us in advance by you with respect to the processing of the Personal Data are complied with.
- e) assist you, at your expense, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- f) notify you without undue delay on becoming aware of a Personal Data breach;
- g) at your written direction, delete or return Personal Data and copies thereof to you on termination of these Terms unless required by Applicable Law to store the Personal Data; and
- h) maintain complete and accurate records and information to demonstrate its compliance with this clause 6.

6.5. You consent to us appointing a third-party processor of Personal Data under this Agreement in accordance with our Privacy Policy such as GoDaddy Media Temple Inc (who process Personal Data under the Privacy Shield). We confirm that we have entered or (as the case may be) will enter with the third-party processor into a written incorporating terms which are substantially similar to those set out in this clause 6.

6.6. Either party to this Agreement may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

6.7. Notwithstanding clause 8, you agree to indemnify, keep indemnified and defend us at your own expense against all costs, claims, damages or expenses incurred by us or for which we may become liable due to any failure by you or your employees, subcontractors or agents to comply with any of your obligations under this clause 6 or the Data Protection Legislation.

7. Intellectual Property Rights

7.1. We own or have consent to use all intellectual property rights in the Services. You may not acquire any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.

7.2. You shall ensure that you own or have consent to use all intellectual property rights that exist in your content. You shall indemnify us against all damages, losses and expenses arising as a result of any action or claim that the Services infringe any Intellectual Property Rights of a third party.

8. Limitation of liability

8.1. Except as expressly and specifically provided in this agreement:

- a) You shall assume sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Services, or any actions taken by us at the your direction; and
 - b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.
- 8.2. Nothing in this agreement excludes our liability:
- a) for death or personal injury caused by our negligence; or
 - b) for fraud or fraudulent misrepresentation.
- 8.3. Subject to clause 8.1 and clause 8.2:
- a) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms; and
 - b) our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total fees paid during the 12 months immediately preceding the date on which the claim arose or if less, the total subscription period.

9. Force majeure

We shall have no liability to you under these Terms if we are prevented from or delayed in providing the Services under this agreement, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, such as (and without limitation) Distributed Denial of Service (DDoS) attacks or other similar network based events, provided that we have notified you of such an event and its expected duration.

10. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11. Severance

- 11.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 11.2. If any provision or part-provision of this agreement is deemed deleted under clause 11.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12. Entire agreement

This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13. Assignment

- 13.1. You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 13.2. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under these Terms.

14. No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15. Third party rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

16. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

17. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).