

Net-Essence Hosting Terms & Conditions

Legal Information

BY PURCHASING OR RENEWING SERVICES FROM NET ESSENCE LTD YOU AGREE TO THESE TERMS OF BUSINESS. THE FOLLOWING TERMS OF BUSINESS APPLY TO ALL SERVICES PROVIDED BY NET ESSENCE TO YOU.

1 DEFINITIONS

"**Agreement**" means the agreement between you and Net Essence Ltd, comprising these Terms together with any orders you may make.

"**Fees**" means the fee or fees (and Local Administration Costs) due for the provision of the services as set out in any order or (if not set out) calculated by reference to the then standard Net Essence prices.

"**ICANN**" means the Internet Corporation for Assigned Names and Numbers.

"**Local Administration Costs**" means any registration fees and other costs incurred by Net Essence on your behalf for the registration or attempted registration of domain names including currency conversion costs and bank charges.

"**Order**" means the order form or letter signed by you requesting Services.

"**Server**" means the computer server equipment operated by Net Essence in connection with the provision of the Services.

"**Service**" or "**Services**" means any and all services provided by Net Essence under these terms including, without limitation, domain name registration services; domain name portfolio management services; domain name searching, monitoring and recovery services, web site hosting, web, email and usenet searching and monitoring services and consultancy services and any other services which may be provided from time to time.

"**Standard Price List**" means the list(s) of the standard prices for Net Essence company products which are available on our website.

"**Terms**" means these terms and conditions of business.

"**Net Essence**" means Net Essence Ltd of 129 Arlington Drive, Carshalton, Surrey, SM5 2EU, United Kingdom and/or any other group member of Net Essence Ltd. which shall supply Services to You.

"**Web Site**" means the area on the Server allocated by Net Essence to you for use by you as a site on the Internet; and

"**You**" means the person, firm or company who purchases Services from Net Essence and any of their or its employees, consultants and authorised agents.

2 APPLICATION OF TERMS

2.1 These Terms apply to any or all Services to be provided by Net Essence to you from time to time. These terms are made up of a number of constituent parts, including the Service-Specific Terms governing Net Essence's provision of the relevant Service to You, as well as the General Terms that govern the provision of all such Services.

2.2 These Terms together with any Order(s) represent the entire agreement relating to the Services and supersede any arrangements previously agreed between you and Net Essence. Save in the case of fraudulent misrepresentation or fraudulent concealment, any representation, warranty or undertaking, whether oral or written, (including in any previous correspondence or communication) and any other terms and conditions sought to be imposed by You by your own order forms or otherwise are expressly excluded.

2.3 No change to these Terms, or a subsequent version of these Terms as may be posted on the Net Essence website from time to time, or any other part of the Agreement, shall be binding unless made with the prior written consent of a director of Net Essence. Unless Net Essence notifies you



to the contrary, no agent of, or person employed by or under contract with Net Essence, has any authority to alter or vary these Terms or the Agreement in any way.

- 2.4 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.

SERVICE-SPECIFIC TERMS AND CONDITIONS

3 DOMAIN NAME REGISTRATION

General

- 3.1 Your use of a domain name, once registered, may be challenged by a third party; if so, ICANN's Uniform Domain Name Dispute Resolution Policy (the "UDRP") as amended from time to time shall apply to all .com, .net and .org registrations or renewals. The terms of the UDRP are available at <http://www.icann.org/udrp/udrp.htm>
- 3.2 We do not warrant or guarantee that the domain name applied for will be registered in your name or is capable of being registered by you. Accordingly, You should take no action in respect of your requested domain name(s) until you have been notified in writing that your requested domain name has been registered.
- 3.3 In addition to these Terms, all domain name registrations are subject to the terms and conditions of any registrar Net Essence may use to fulfil the Order and the rules and regulations of the relevant Network Information Center (NIC) or similar registry administrator. As a condition of the Agreement You agree to be bound by the rules and regulations and dispute resolution policies applicable to each domain name applied for on your behalf. You are responsible for ensuring that you are aware of those terms and conditions and can and do comply with them. You irrevocably waive any claims you may have against Net Essence in respect of any decision of a naming authority or its agents to refuse to register a domain name, to suspend a domain name or to cancel a domain name and, without limitation agree that the administration charge paid by you to Net Essence shall be non-refundable in any event.
- (a) CENTRALNIC DOMAIN NAMES (.uk.com/.gb.com etc.)
Special terms and conditions apply additionally to registrations of CentralNic domain names. Please refer to the separate notice on the Net Essence website.
- (b) UK DOMAIN NAMES NOMINET UK
Special terms and conditions apply additionally to registrations of .uk domain names. Please refer to the separate notice on the Net Essence website.
- 3.4 We accept no responsibility in respect of the use of a domain name by you and any dispute between you and any other individual or organisation regarding a domain name must be resolved between the parties concerned and we will take no part in any such dispute. We reserve the right, on our becoming aware of such a dispute, at our sole discretion and without giving any reason, to either suspend or cancel the domain name, and/or to make appropriate representations to the relevant naming authority. You warrant and undertake that to the best of your knowledge and belief neither the registration of the domain name nor the manner in which it is directly or indirectly used by You or and any licensee directly or indirectly infringes the legal rights of a third party.
- 3.5 You are solely responsible for providing Net Essence with accurate and up-to-date contact information and we shall not accept any responsibility for any cancellation or refusal to renew a domain name by the relevant naming authority due to any failure to provide such information. Any changes made by you to your details using the control panel facility are your own responsibility. Unless You have subscribed to one of our domain name portfolio management products in respect of a particular name or names we are not responsible for the renewals of any domain name registrations and You should make your own arrangements for reminding yourself when any name is due for renewal.
- 3.6 Domain name transfers to another registrar will be free of charge where Net Essence is not



charged a transfer fee by the registry. We reserve the right to charge an administrative fee in respect of any transfers to another web hosting or domain name registration company where:

- (a) we are charged a fee for the transfer.
- (b) at least one renewal or registration fee for the domain name has not been paid by the customer.
- (c) a transfer has failed and the transfer has been resubmitted (a fee will be charged for each transfer attempt).
- (d) we terminate service under section 14.1, 14.2 or 14.3 of these terms for any account or service you hold with us.

Information you are required to submit

- 3.7 As part of the registration process, you are required to provide certain information and to update promptly this information as needed to keep it current, complete and accurate. This information will be used by Net Essence in accordance with its Privacy Policy. The information you are obliged to provide in connection with the domain name you are registering is the following:
- (a) Your name and postal address (or if different, that of the domain name holder);
 - (b) The domain name being registered;
 - (c) The name, postal address, e-mail address, voice telephone number, and where available, fax number of the administrative contact for the domain name; and
 - (d) The name, postal address, e-mail address, voice telephone number, and where available, fax number of the billing contact for the domain name.
- 3.8 You agree and acknowledge that when you renew your domain name registration, the type of information you are required to provide may have changed. If you do not wish to provide the new required information, your registration may not be renewed.
- 3.9 All other information which we may request from you at registration is voluntary. However, not providing this information may prevent you from obtaining all products and services made available to domain name registrants by Net Essence, other than registration of the domain name.
- 3.10 If You intend to license use of a domain name to third party You are still responsible for providing the contact information specified above and for providing and updating accurate technical and administrative contact information. You accept liability for any wrongful use of the domain name unless you promptly discuss the identity of the license to any party providing reasonable evidence of actionable harm.

Additional information maintained about your registration

- 3.11 In addition to the information you provide, as registrar we maintain records relating to your domain name registration. These records may include:
- (a) The original creation date of the registration;
 - (b) The submission date and time of the registration application to Net Essence and by Net Essence to the proper registry;
 - (c) Communications (electronic or paper form) constituting registration orders, modifications, or terminations and related correspondence between you and Net Essence;
 - (d) Records of account for your domain name registration, including dates and amounts of all payments and refunds;
 - (e) The IP addresses of the primary nameserver and any secondary nameservers for the domain name;
 - (f) The corresponding names of those nameservers;
 - (g) The name, postal address, e-mail address, voice telephone number, and where available,



fax number of the technical contact for the domain name;

- (h) The name, postal address, e-mail address, voice telephone number, and where available, fax number of the zone contact for the domain name;
- (i) The expiration date of the registration;
- (j) Information regarding all other activity between you and Net Essence regarding your domain name registration and related services.

Obligations relating to provided data

- 3.12 In the event that, in registering the domain name, You are providing information about a third party, You hereby represent that You have:
- (a) provided notice to that third party of the disclosure and use of that party's information as set forth in this Agreement, and
 - (b) that You have obtained that third party's express consent to the disclosure and use of that party's information as set forth in these terms and conditions.
- 3.13 You acknowledge that wilfully providing inaccurate information or wilfully failing to update information promptly will constitute a material breach of these terms and conditions and will be sufficient basis for cancellation of your domain name registration. You further agree that your failure to respond for over fifteen (15) calendar days to inquiries by Net Essence concerning the accuracy of contact details associated with your registration shall constitute a material breach of these terms and conditions and will be sufficient basis for cancellation of your domain name registration.
- 3.14 Net Essence will not process data about any identified or identifiable natural person that we obtain from you in a way incompatible with the purposes and other limitations which we describe in this Agreement.
- 3.15 Net Essence will take reasonable precautions to protect the information it obtains from you from our loss, misuse, unauthorised access or disclosure or use, or alteration or destruction, or that information. Net Essence will have no liability to you or any third party to the extent such reasonable precautions are taken.

Disclosure and use of registration information

- 3.16 You agree and acknowledge that Net Essence will make available domain name registration information You provide or that we otherwise maintain to ICANN, to the registry administrator(s), and to other third parties as ICANN and applicable laws may require or permit. You further agree and acknowledge that Net Essence may make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information You provide, for purposes of inspection or for targeted marketing and other purposes as required or permitted by ICANN and applicable laws.
- 3.17 Additionally, You acknowledge that ICANN may establish guidelines, limits and/or requirements that relate to the amount and type of information that Net Essence may or must make available to the public or to private entities, and the manner in which such information is made available.
- 3.18 You hereby consent to any and all such disclosures and use of, and guidelines, limits and restrictions on disclosure or use of, information provided by You in connection with the registration of a domain name (including any updates to such information), whether during or after the term of your registration of the domain name. You hereby irrevocably waive any and all claims and causes of action you may have arising from such disclosure or use of your domain name registration information by Net Essence.
- 3.19 Certain Net Essence users have access to Net Essence's control panel. If you are one of those users, you may use the control panel utility to modify the zone file, DNS, IP, MX Records and SOA WHOIS, and contact information for any .com, .net, or .org domain name registered through or administered by Net Essence or registered by a Net Essence reseller. Users without such access should contact the Net Essence's customer services department to effect any



alterations.

Ownership of data

3.20 You agree and acknowledge that Net Essence owns all database, compilation, collective and similar rights, title and interests worldwide in our domain name database, and all information and derivative works generated from the domain name database. You further agree and acknowledge that we own the following information for those registrations for which we are the registrar:

- (a) the original creation date of the registration,
- (b) the expiration date of the registration,
- (c) the name, postal address, e-mail address, voice telephone number, and where available fax number of the technical contact, administrative contact, zone contact and billing contact for the domain name registration,
- (d) any remarks concerning the registered domain name that appear or should appear in the WHOIS or similar database, and
- (e) any other information we generate or obtain in connection with the provision of domain name registration services, other than the domain name being registered, the IP addresses of the primary nameserver and any secondary nameservers for the domain name, and the corresponding names of those nameservers.

Domain Registrar Transfers

3.21 You agree that you can change registrar for an existing domain name only in accordance with the policy of the relevant registry. You agree you may not change registrar for a period of sixty (60) days after initial registration of the domain name with Net Essence or within 60 days before or after a renewal date. Only the "Authoritative Holder" (the entity listed as the registrant in the current domain name registration) of the domain name registration may initiate a request to transfer that domain name registration from another registrar to Net Essence. You hereby represent that you have the full and complete authority as the holder of the domain name registration to initiate such a transfer, or that you have been given full and complete authority by the Authoritative Holder of the domain name registration to initiate such a transfer. Net Essence, at its sole discretion, may require you to provide documentation that proves that the Authoritative Holder of the domain name initiated this transfer request. The request to transfer a domain name registration from another registrar to Net Essence may be denied:

- (a) during the first sixty (60) days after initial registration of the domain name with the original registrar;
- (b) in accordance with circumstances described in the Domain Name Dispute Policy;
- (c) if there is a pending bankruptcy of the domain name holder;
- (d) where there is a dispute over the identity of the domain name holder; by operation of law; or
- (e) at the discretion of the then-current registrar.

It is the responsibility of the Authoritative Holder to ensure that the request to transfer will not be denied for any of the above reasons prior to initiating and paying for the registrar transfer services. Fees are not refundable, but can be applied to subsequent transfer requests at Net Essence's sole discretion.

Upon successful completion of the registrar transfer request, Net Essence shall immediately become the registrar of record. For non .uk names you will be required to extend your existing registration term for one (1) year from the date your existing registration is set to expire, provided that the total unexpired term of a registration does not exceed ten (10) years. If the transfer renewal would take the registration period over



ten years then the additional year will not be applied.

4 WEB SITE HOSTING/EMAIL/ONLINE STORE SYSTEMS

- 4.1 We specifically exclude any warranty as to the accuracy or quality of information received by any person via the Server and in no event will we be liable for any loss or damage to any data stored on the Server. You are responsible for maintaining insurance cover in respect of any loss or damage to data stored on the Server.
- 4.2 You warrant to Net Essence that you will only use your assigned Web Site for lawful purposes. In particular, you further warrant and undertake to Net Essence that:
- (a) You will not, nor will You authorise or permit any other party to, use the Server in violation of any law or regulation;
 - (b) You will not knowingly or recklessly post, link to or transmit:
 - (i) any material that is unlawful, threatening, abusive, harmful, malicious, libellous, defamatory, obscene, pornographic, profane or otherwise objectionable in any way; or
 - (ii) any material containing a virus or other hostile computer program;
 - (iii) any material that shall constitute or encourage a criminal offence, give rise to civil liability or that violates or infringes any trade mark, copyright, other intellectual property rights or similar rights of any person, firm or company under the laws of any jurisdiction; and
 - (c) You will conform to the standards and acceptable use policies of Net Essence from time to time and will not yourself, and will ensure that none of your end users, make excessive or wasteful use of the Server to our detriment or that of our other customers.
- 4.3 Net Essence may suspend the Service immediately in its sole discretion if we receive any complaint that material on the Server may be unlawful, harmful or defamatory or if we believe our standards or acceptable use policy has been breached
- 4.4 We may disclose your name and address to a complaining individual or naming authority if in our reasonable discretion, it is necessary or appropriate to do so.
- 4.5 You are responsible for sending mail in accordance with any relevant legislation (including data protection legislation) and for sending the same in a secure manner. We will take all reasonable steps to ensure accurate and prompt routing of messages but we will not accept any liability for non-receipt or misrouting or any other failure of email.
- 4.6 You warrant, undertake and agree that:
- (a) all transactions within any online store system operated by you will be contracts for the sale of goods between You as the merchant and your end-user customer and You agree that we may include an exclusion of our liability in respect of such purchases and transactions in such form as we deem appropriate.
 - (b) the information contained within any online store system complies with all applicable law, including, without limitation, any distance selling regulations and data protection regulations from time to time in force.
 - (c) You will keep secure any identification, password and other confidential information relating to your account and You will notify Net Essence immediately of any known or suspected unauthorised use of your account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of your password information.
- 4.7 Whilst we shall use reasonable endeavours to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers.

5 DEDICATED SERVERS AND CO-LOCATION

- 5.1 Net Essence will provide a clean and reliable power supply, a temperature controlled environment and internet connectivity to dedicated servers and co-located equipment.

- 5.2 Net Essence will provide support services for the customer in line with the description of the product purchased. Customers ordering Dedicated server products are expected to have sufficient technical ability to operate the equipment, customers that do not have sufficient technical expertise should purchase a suitable server management product.
- 5.3 You warrant to Net Essence that you will only use your equipment for lawful purposes. In particular, you further warrant and undertake to Net Essence that:
- (a) You will not, nor will You authorise or permit any other party to, use the equipment in violation of any law or regulation;
 - (b) You will not knowingly or recklessly post, link to or transmit:
 - (i) any material that is unlawful, threatening, abusive, harmful, malicious, libelous, defamatory, obscene, pornographic, profane or otherwise objectionable in any way; or
 - (ii) any material containing a virus or other hostile computer program;
 - (iii) any material that shall constitute or encourage a criminal offence, give rise to civil liability or that violates or infringes any trade mark, copyright, other intellectual property rights or similar rights of any person, firm or company under the laws of any jurisdiction; and
 - (c) You will conform to the standards and acceptable use policies of Net Essence from time to time and will not yourself, and will ensure that none of your end users, make excessive or wasteful use of our network to our detriment or that of our other customers.
- 5.4 IP addresses will only be allocated in line with the rules of RIPE (www.ripe.net). We reserve the right to reclaim any allocated IP addresses should your use of the Allocated IP addresses breach the RIPE rules.
- 5.5 Net Essence may remove any equipment from our network without notice if we have reason to believe the equipment has been compromised or is being use for illegal activities.
- 5.6 Customers with a monthly data transfer limit will be charged monthly in arrears for any excess data transfer used.
- 5.7 Customers with unmetered data transfer products may have their equipment's network port speed reduced if in the opinion of Net Essence they are causing a network load that will reduce service level for other customers. Unmetered customers requiring high transfer rates for applications such as, but not limited to, file sharing or audio and video streaming should purchase products specifically designed for that purpose.
- 5.8 Net Essence will provide 15 minutes of free advanced support per month.
- 5.9 All software is provided as-is. Customers should contact software authors for bug fixes and security updates. Apart from support detailed in section 5.8 Net Essence does not include support for any software or operating systems with dedicated server or co-location products. Advanced support or server management may be purchased separately.

6 RESELLER TERMS AND CONDITIONS

- 6.1 If You are or become a reseller of our Services You must ensure that You continue to comply with these terms and conditions by making your customers bound to no less comprehensive and protective terms and conditions than these.
- 6.2 You agree that in your capacity as reseller of our services you will not incur any liability on our part or in any way pledge or purport to pledge our credit or purport to make any contract binding on Net Essence.
- 6.3 We do not accept the liability or default of your own customers as affecting or limiting your obligations under this Agreement and we suggest that you require your customers to sign a form of this Agreement.
- 6.4 As a reseller you shall hold Net Essence and shall procure that your customers to hold Net



Essence harmless in respect of any act or omission by you or your customers and to indemnify Net Essence in respect of any claims that may be made directly against Net Essence.

GENERAL TERMS AND CONDITIONS

7 ORDERS

- 7.1 Each Order for Services by You shall be deemed to be an offer by you to buy the Services from Net Essence subject to these Terms. No Order shall be deemed to be accepted by Net Essence until Net Essence issues a written acknowledgement or (if earlier) the Services are provided.
- 7.2 Payment of a renewal order will be deemed to be an acceptance of these terms and the renewed services will be provided under these terms.
- 7.3 Net Essence is under no obligation to provide any Service that is not set out in the Order and the relevant product unless Net Essence and Client enter into a new Agreement for the provision of additional services accepted by a duly authorised representative of Net Essence.
- 7.4 You shall provide to Net Essence, at your cost, any information, resources or facilities reasonably requested by Net Essence for the delivery of the Services and, where necessary, ensure that your employees, contractors and other suppliers co-operate fully and promptly with Net Essence.
- 7.5 Any instructions supplied by you to Net Essence in relation to the Services must be complete, accurate and clearly legible. Net Essence reserves the right to make a charge for any costs and any additional work incurred by Net Essence from any failure by you to comply with this provision and shall not be liable for any errors caused by such failure.
- 7.6 No purported cancellation of any Order or part of an Order will be effective unless and until Net Essence gives written acknowledgement of cancellation. Net Essence may, as a condition of such acknowledgement, or otherwise on early termination in accordance with clause 14, impose such reasonable charge for cancellation as it shall consider appropriate including a charge for any costs (including Local Administration Costs) and for any work incurred by Net Essence at the date cancellation is acknowledged.
- 7.7 You acknowledge and agree that our services commence upon the sending of our notice of confirmation, pursuant to clause 7.1 above, and that there is no right to cancel the contract between us under the Council Directive 97/7/EC on the protection of consumers in respect of distance contracts or associated local laws.
- 7.8 Net Essence 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. No alterations to the Service shall affect the Fees payable by the Client.
- 7.9 Net Essence may remove features from any Service where the feature relies on software or hardware no longer produced or supported by the author or manufacturer. No alterations to the Service shall affect the Fees payable by the Client.
- 7.10 Placing an upgrade order will be deemed to be an acceptance of these terms and the whole of the upgraded services will be provided under these terms.

8 PAYMENT

- 8.1 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 reserve the right, forthwith and at our sole discretion, to suspend the provision of Services to You.
- 8.2 Subject to an increase in third party costs such as software licensing or power the Fee for the Services shall be in accordance with the relevant scale of charges and rates published on our website. Net Essence reserves the right to alter the Fees payable for Services at any time and any new Order or renewal for Services after such time shall be deemed to have been made in acceptance of such new Fees. Subject to clause 8.3 such alterations will not affect any previously



accepted Order or quotation given under 8.5 below with the exception of any price increase under section 8.10.

- 8.3 You acknowledge that Local Administration Costs may differ from the amount or amounts (if any) previously indicated by Net Essence as a result of changes in pricing by the relevant domain authority and/or changes in the exchange rate and associated bank charges and You agree to pay the actual Local Administration Costs incurred by Net Essence on your behalf if higher than those set out in the Order.
- 8.4 You acknowledge that the Fee may represent only the initial costs of a domain name registration and that continued use of the name will require you to pay recurring charges and renewal fees.
- 8.5 Unless otherwise expressly specified in the Order, and subject to clause 3.2, all quotations given by Net Essence for Net Essence's Fees are valid for a period of 30 days only from the date upon which they are given, after which time the quotation shall automatically expire.
- 8.6 The price of the Services is exclusive of VAT or its equivalent and all other tax or duty which, if applicable, shall be payable by you in addition at the appropriate rate.
- 8.7 Net Essence reserves the right to demand payment on account in advance of providing any Services and unless otherwise specified in the Order may invoice in respect of work completed or to be carried out, before, during and after completion of such work as it sees fit. In the event you instruct us to renew a domain name registration you will be asked to make advance payment.
- 8.8 Invoices are payable within 30 days of the date of the invoice without deduction or set-off. Unpaid invoices shall attract a charge for compensation and also interest on the outstanding debt. Interest will be charged at a rate of 8% per annum above HSBC bank's base rate without prior notice (such interest being payable both before and after any judgement may be obtained). Compensation will be payable according to the following scale, up to £999.99 Charge is £40.00, from £1000.00 to £9999.99 Charge is £70.00 and £10000.00 or more the charge is £100.00. Net Essence reserves the right to suspend the Services until payment is made. Time for payment is of the essence. With regard to Fees that relate to the relevant fee for a domain name registration, you must make payment in full before your application can be accepted.
- 8.9 Where Services are provided prior to the relevant Fees being paid, Net Essence may retain the title in and ownership of all domain names registered on your behalf unless and until payment is made, and if such Fees are overdue Net Essence may deal with such names without restriction as if the full legal and beneficial owner.
- 8.10 Net Essence reserves the right to change the price of currently active services where the cost of the supply of that service may vary due to power costs, exchange rates, transit supply costs or data centre costs.
- 8.11 Unless otherwise agreed Net Essence will invoice you or take payment under our credit card or debit card arrangement in advance either monthly, quarterly, annually or bi-annually such payment periods to be agreed prior to the commencement of the term. The first invoice will cover any set-up charges and the first service payment due. Subsequent payments will be taken in line with the payments due according to the initial order and any upgrades made.
- 8.12 Net Essence may, at its discretion, suspend, shutdown or partially restrict access to services where a renewal order or invoice is not paid by the due date. A reconnection charge of £50 will be payable to restore service.

9 INTELLECTUAL PROPERTY RIGHTS AND OTHER CONSENTS

- 9.1 Net Essence retains ownership of all intellectual property rights in any information, reports, documents, software or other materials created by Net Essence as part of the Services, including all methodologies, know-how and processes used to do so (together, the "Materials"). Net Essence grants to you a limited licence to store and view the Materials delivered to you on your internal computer network. Unless done so strictly for your internal business use, the Materials



may not be otherwise reproduced, transmitted, broadcast or displayed in public without Net Essence's prior written consent. Net Essence is the proprietor of the Net Essence trademark in the UK and other countries. All other trademarks, product names and company names or logos used in our site are our property of that of their respective owners. No permission is given by us in respect of the use of any such trade marks, get-up, product names, company names, logos or titles and You acknowledge that such use may constitute an infringement of the holder's rights.

- 9.2 You are solely responsible for obtaining all intellectual property rights clearances and/or other consents and authorisations necessary in respect of the names, marks or other materials which are the object of the Services and You warrant that Net Essence use of such names, marks or materials and any other information, documents or software which You supply to Net Essence under this Agreement (together, the "Objects") shall not infringe any third party's intellectual property rights or be otherwise unlawful or illegal.
- 9.3 On becoming aware of any dispute between You and any other individual or organisation regarding the Objects, Net Essence reserves the right, at its sole discretion and without notice or liability to You, to cease any further use of such Objects including, without limitation, deleting or suspending them from its computer systems and/or to make appropriate representations or provide information to any relevant authority or interested party.

10 LIABILITY

- 10.1 Whilst Net Essence shall use reasonable skill and care in the delivery of the Services You acknowledge that the delivery of the Services:
- (a) is subject to the inherent technical and operational limitations of the Internet, including, but not limited to, the lack of security and unreliability of its communications, the evolving nature of its organisational, legal and regulatory framework, and the potential inaccuracy and variable standards of its relevant data repositories, such as national domain name registries, and is therefore made without guarantee as to accuracy or completeness for which Net Essence shall have no liability to You or any third party;
 - (b) may, in whole or in part, be prohibited, restricted or otherwise subject to relevant third party contractual provisions, such as the terms and conditions of Internet naming authorities, for which Net Essence shall have no liability to You and You warrant that You shall ensure that You are made aware of, and comply with, such provisions.
- 10.2 We shall use reasonable endeavours to provide continuing availability of the Server and the Services but we shall not, in any event, be liable for Service interruptions or down time of the Server, except to the extent set out in the Service Level Agreement applicable to the Services you have ordered.
- 10.3 Net Essence shall not be liable for any delay or failure to perform its obligations under this Agreement where such delay or failure is due to circumstances beyond its reasonable control including, without limitation, any act or omission by you or providers of Internet connectivity and other events of force majeure. Any time deadlines set out in the Order or otherwise agreed are estimates only.
- 10.4 All conditions, terms, representations (other than fraudulent representations) and warranties relating to the Services, whether implied by law or otherwise, which are not expressly stated in this Agreement including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are excluded to the fullest extent possible by law.
- 10.5 Net Essence's total aggregate liability to You for any claim in contract, tort, negligence or otherwise arising out of or in connection with this Agreement and the provision of the Services shall be limited to the price paid by You in respect of the Services which are the subject of any such claim and provided that You notify Net Essence of any such claim within one year of it arising. In no event shall Net Essence be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.
- 10.6 Nothing in this Agreement shall limit or exclude Net Essence's liability for death or personal



injury resulting from Net Essence's negligence or any other liability, the limitation or restriction of which is prohibited by law.

- 10.7 The Services are provided by Net Essence for your exclusive use. Net Essence does not accept any liability or obligation towards any third party or generally towards any person and the Contract (Rights of Third Parties) Act 1999 shall not apply to the relationship between you and Net Essence.

11 INDEMNITY

You agree to indemnify and keep indemnified and hold Net Essence and our directors, officers, employees and agents and the registry operators for .uk, .com, .net and .org domain names on demand harmless from and against any claim brought against Net Essence or them by a third party resulting from the provision of Services by Net Essence to You and/or your use of the Server and/or any domain name registered, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, whatsoever suffered and howsoever incurred by Net Essence or them in consequence of your breach or non-observance of these terms of business.

12 CONFIDENTIALITY AND PUBLICITY

- 12.1 Both You and Net Essence undertake not to disclose to a third party any confidential information which You or Net Essence receives relating to the contents or performance of this Agreement or the other's business in general, and shall procure that each of its directors and employees shall not do so, except with the prior consent in writing of the other, as required by law, or to the extent to which that information is publicly available or already known to the receiving party at the date of receipt other than through any unauthorised disclosure by any person.
- 12.2 Without prejudice to clause 12.1, Net Essence shall be entitled to mention your name as a client of Net Essence and the name(s) of products in respect of which Net Essence provides Services in publicity and promotional material on and off-line without your prior consent unless You send notice in writing to Net Essence Ltd. (by post to Legal Department, Net Essence Ltd. 129 Arlington Drive, Carshalton, Surrey, SM5 2EU, England) referencing this clause and requesting no publicity. Any request will only apply to publicity material to be prepared after such notice is given and Net Essence will be under no obligation to cease using material printed or published prior to such notice.

13 CREDIT CARD SECURITY

- 13.1 We use a secure server that implements Secure Socket Layer (SSL) technology (certified to the standard for encrypted credit card transactions stipulated by Verisign Inc.) to prevent any person from gaining access to your credit card or registration information whilst it is on our site or being transmitted across the internet.
- 13.2 If you discover that goods or services have been ordered from our site using your credit card details in circumstances where you had not agreed to or authorised this, then (provided you have not, through failure to take reasonable care, allowed an unauthorised person to gain access to your credit card details, purchaser ID or password) we will refund to you the money receive provided that:
- (a) you inform your credit card company and us of the unauthorised purchase as soon as you discover it and no later than 12 months from the date of the transaction; and
 - (b) you co-operate with your credit card company, the supplier, us and, if necessary, the police in relation to the unauthorised use.
- 13.3 Net Essence provides the facility for customers to add credit and debit cards to the Net Essence billing system in order to make card payments more convenient. You agree that Net Essence may use any card listed within your account to settle amounts due for payment on your account providing:
- (a) The card is enabled for payment

- (b) The card is enabled for recurring payments.

You agree that should you not wish for a card to be used to settle your account you will either:

- (c) Remove the card from your account.
- (d) Disable the card within the control panel
- (e) Disable recurring payment within the control panel

13.4 You agree not to add a credit/debit card to your account within the Net Essence control panel unless you have the permission of the card holder to use the card. In the event of a charge back by the card issuing bank you agree to reimburse to Net Essence any costs involved.

13.5 You agree to provide any proof of right to use a credit/debit card that may be requested by Net Essence.

14 TERMINATION

14.1 We may terminate this Agreement forthwith if you fail to pay any sums due to Net Essence as they fall due or if, in our reasonable opinion, you do not have sufficient technical expertise to use the service without excessive ongoing technical support or if, in our reasonable opinion at any time you are abusive to any member of staff.

14.2 We may terminate this Agreement upon written notice if You breach any of these terms and conditions and You fail to correct the breach within thirty (30) days following written notice from Net Essence specifying the breach, or if You are a company You go into insolvent liquidation, or if You are a person You are declared bankrupt.

14.3 You acknowledge and agree that your domain name registration is subject to suspension, cancellation, transfer or modification pursuant to the terms of any rules or policies applicable to your domain name registration, including, but not limited to

- (a) the UDRP,
- (b) any ICANN adopted policy,
- (c) any registrar or registry administrator procedures, or
- (d) any other ccTLD registry administrator procedures.

14.4 Unless specifically stated otherwise on the order all products and services are provided on the basis of an initial term of 12 months and will automatically continue for additional 12 month periods thereafter unless and until terminated in writing or via the termination facility available within the Net Essence control panel on 30 full days' notice prior to the end of the current 12 month term. No termination notice will be classed as received or valid until acknowledged and confirmed in writing by Net Essence.

14.5 On termination of the Agreement we shall be entitled immediately to block your Web Site and to remove all data located on it. We will hold such data for a period of 14 days and allow you to collect it at your expense, failing which we shall be entitled to delete all such data. We shall further be entitled to post such notice in respect of the non-availability of your Web Site as we think fit.

15 NOTICES

Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this Agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email to the customer shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by email to Net Essence notice shall be deemed to be received on the date a valid ticket number is provided to the customer to acknowledge receipt or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

16 LAW

16.1 For the adjudication of disputes concerning or arising from use of the domain name, the

domain name holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the domain name holder's domicile and (2) the courts of England.

16.2 Subject to clause 16.1 above:-

the Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its promotion) shall be governed by and construed in accordance with English law.

each of the parties to this Agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings and/or to settle any disputes which may arise out of or in connection with this Agreement and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.

17 ENTIRE AGREEMENT

17.1 These Terms together with any Order and any document expressly referred to in them, contain the entire agreement between Net Essence relating to the subject matter covered and, save in the case of fraudulent misrepresentation or fraudulent concealment, supersede any previous agreements, arrangements, undertakings or proposals, written or oral, between Net Essence in relation to such matters. We may alter these terms at any time without notification to you provided the current terms are always available on our website. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions.

17.2 You confirm that, in agreeing to these terms and conditions, You have not relied on any representation save insofar as the same has expressly in these terms and conditions been made a representation and You agree that You shall have no remedy in respect of any misrepresentation (other than a fraudulent misrepresentation) which has not become a term of this Agreement.

18 SERVICE LEVELS

18.1 Net Essence's Service Level Agreements set out the hosting performance you can expect and your right to credits in the event of non-performance.

19 MISCELLANEOUS

19.1 If any provision of this Agreement or part thereof shall be void for whatever reason, the offending words shall be deemed deleted and the remaining provisions shall continue in full force and effect.

19.2 Your rights and obligations under this Agreement are personal to you and you undertake that you shall not nor purport to: assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.

19.3 Net Essence reserves the right to sub-contract any of the work required to fulfil the Services and to assign this Agreement upon notice to you.

19.4 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.

19.5 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.

19.6 Clause headings have been included in this Agreement for convenience only and shall not be considered part of, or be used in interpreting, this Agreement.