

Issue: host-2.20070625 superseding 1.20060327

All Users of services provided by Toucan Internet LLP, by use of such services, accept the terms of business set out in the form of service agreement which follows, irrespective of the mode or manner of ordering employed by the User when ordering the services.

NOTE: Spamming, or the sending of unsolicited email, from a Toucan Internet LLP server or using an email address that is maintained on a Toucan Internet LLP machine is STRICTLY PROHIBITED.

This Agreement is made between Toucan Internet LLP. Registered office: 52 Queen Anne Street, London W1G 9LA ("we" and also "Toucan") and the user

\_\_\_\_\_ (name)

of

\_\_\_\_\_ ("you" and also "the Customer").

The date of this Agreement is

\_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_ (signature)

The following constitute the terms and conditions under which Toucan Internet LLP trades and supplies its services and related products. These conditions, in conjunction with the details as shown on the Toucan Internet LLP Order Form (where completed) ) and "Toucan Internet LLP Terms Of Business – web design, programming and construction" represent the totality of the agreement and form the Contract between Toucan Internet LLP and the User.

Any agreed variation or alteration to part of these terms and conditions as annexed to this Contract will not invalidate the remainder or the whole. Any alteration or addition to the supplies instructed on the order will require to be the subject of a new order. Toucan Internet LLP is entitled to suspend services if the User does not adhere to any or several conditions of this Contract.

## 1. DEFINITIONS

In this Contract unless the context otherwise requires:

"Service" or "Services" means domain name registration, Web Server hosting, bandwidth provision, email and any other service or facility provided by us to you.

"Server" means the computer server equipment operated by us or provided by you in connection with the provision of the Services;

"Server Facilities" means the area on the Server allocated by us to you for use by you as a website on the Internet and for email;

"Toucan" means Toucan Internet LLP. Registered office: 52 Queen Anne Street, London W1G 9LA

"Contract" means the agreement between Toucan and the User incorporating these conditions, the TOUCAN Order Form (where completed) and TOUCAN's published charges for the provision of its services; References to "Agreement" shall, where the context admits, be read as referring to the Contract

"Charges" means the charges as agreed on the Order Form (where completed) and TOUCAN's latest published prices for products and services requested or incurred by you

"bandwidth" means the allocated transmission capacity, measured in bits per second, of the network connection as specified in the Contract;

"data transfer" means all traffic that passes through the Virtual Server including specifically but not exclusively web traffic, email, FTP transfers and any shell session data;

"Site" means the premises or location at which Service is or is to be provided under this Contract;

"Equipment" means equipment which is supplied by or on behalf of TOUCAN to the customer or placed at or on a Site for the purpose of providing Service;

"Internet" means the global data network comprising Internet connected networks using TCP/IP (Transmission

Control Protocol/Intermit Protocol) Internet Standards means the protocols and standards defined in the following Internet documents: RFC 1009, 1122, 1123 and 1250 and any future such protocols and standards as appropriate;

"User" means you, the Customer, or any person who makes use of the services though you or on your behalf;

"Initial Contract Term" means the initial period of service as specified in clause 6;

"Extension Term" means each successive period of twelve months after the Initial Contract Term.

## 2. DOMAIN NAME REGISTRATION

2.1 We make no representation that the domain name you wish to register is capable of being registered by or for you or that it will be registered in your name. You should therefore not assume registration of your requested domain name(s) until you have been notified that it has or they have been registered. Any action taken by you before such notification is at your risk;

2.2 The registration and use of your domain name is subject to the terms and conditions of use applied by the relevant naming authority; you shall ensure that you are aware of those terms and conditions and that you comply with them. For UK domain registrations you shall ensure that you are aware of the terms and conditions of Nominet UK, the UK naming authority, that can be found at <http://www.nominet.org.uk/nominet-terms.html> and that you comply with them. You shall have no right to bring any claim against us in respect of refusal to register a domain name or cancellation of the domain name by the relevant naming authority. Any administration charge paid by you to us shall be non-refundable notwithstanding refusal by the naming authority to register your desired name.

2.3 We shall have no liability in respect of the use by you of any domain name; any dispute between you and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, we shall be entitled, at our discretion and without giving any reason, to withhold, suspend or cancel the domain name. We shall also be entitled to make representations to the relevant naming authority but will not be obliged to take part in any such dispute.

2.4 We give no warranty or representation that your domain name is or will continue to be available for your use or that no domain name is or will be registered which conflicts with your domain name or which otherwise affects your use of your domain name.

2.5 TOUCAN shall be entitled to withhold the release of any domain name to another provider or "tag holder" unless full payment of all amounts due to us at that time for whatever reason has been received by us:

2.6 If payment is not received for any domain name TOUCAN may delete or retain the domain for further sale.

2.7 You may request deletion of a UK domain name registered with Nominet UK only within 7 days of the application date for that domain name. There will be a standard "deletion charge" of £50. Deletion requests after these 7 days will not be accepted.

### 3. WEB SERVER FACILITIES and EMAIL

3.1. We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss of or damage to any data stored on the Server.

3.2. You shall effect and maintain adequate insurance cover in respect of any loss of or damage to data stored on the Server.

3.3 You represent, undertake and warrant to us that you will use the Web Server Facilities allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that:

3.3.1 you will not use the Web Server Facilities in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so;

3.3.2 you will not post, link to or transmit:

(a) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;

(b) any material containing a virus or other hostile computer program;

(c) any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.

3.4 You shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information.

3.5 You shall observe the procedures which we may from time to time prescribe and shall make no use of the Web Server Facilities which is detrimental to our other customers.

3.6 You shall procure that all email is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.

3.7 In the case of an individual User, you warrant that you are at least 18 years of age and if the User is a company, you warrant that the Services will not be used by anyone under the age of 18 years.

3.8 Any access to other networks connected to TOUCAN must comply with the rules appropriate for those other networks.

3.9 While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers or from corruption by virus and we shall be under no liability for non-receipt or misrouting of email or for any other failure of email or damage to date or operations.

3.10 Customers using or applying for a Web and email server facilities , or upgrading from other hosting service levels will be restricted to a specific maximum data storage space, a specific maximum number of domain names with active websites, a specific maximum bandwidth per month. Additional bandwidth usage will be charged at current published prices. The maximums are detailed in the Service Levels Tariff and is subject to change without notice.

## 5. TOUCAN SERVICE

5.1 Connection to the TOUCAN Service is via a fixed telecommunications link or dial up connection. This Contract, unless specifically stated on the Order Form, does not include the provision of telecommunications services necessary for connection to the TOUCAN Service.

5.2 Requests relating to the provision of Service are, unless otherwise agreed to be made or confirmed in writing or by electronic mail.

5.3 TOUCAN will use all reasonable endeavours to adhere to any dates proposed by either TOUCAN or you for the provision of Service; however any such date is to be treated as an estimate only and TOUCAN accepts no liability for failure to meet such dates.

5.4 TOUCAN will use all reasonable endeavours to provide reliable Service; however, it is not practicable to provide Service free of faults and TOUCAN does not undertake to do so. In the event of a fault in Service, you must report the fault by the Support Request pages on the Toucan Internet website, by telephone or by electronic mail to TOUCAN's Technical Support at the appropriate numbers or addresses or other such numbers or addresses that TOUCAN may from time to time provide. Upon receipt of the fault report, TOUCAN will take all proper steps without undue delay to correct the fault. TOUCAN shall not, in any event, be liable for interruptions of Service or downtime of a Server.

5.5 TOUCAN may:

5.5.1 temporarily suspend for the purpose of repair, maintenance or improvement, part or all of Service, without notice. TOUCAN undertakes to use reasonable endeavours to restore Service as soon as practicable after any such suspension,

5.5.2 give or update instructions regarding the use of Service which in TOUCAN's reasonable opinion are necessary in the interests of safety, or to maintain or improve the quality of Service to TOUCAN's customers. Any such instructions shall, whilst they are in force, be deemed to form part of this Contract,

5.5.3 vary the technical specification of Service for operational reasons. The exact technical specification of every TOUCAN Web Server Facilities at the time of enquiry can be found on our website or is available on request.

5.6.1 Scheduled Maintenance - "Scheduled Maintenance" shall mean any maintenance at any of TOUCAN's contracted network nodes of which the Customer is usually notified 48 hours in advance, and maintenance that is performed during a standard maintenance window on Tuesdays from 2 AM to 6 AM local time on any of TOUCAN's contracted network nodes. Notice of Scheduled Maintenance will normally be provided on the TOUCAN INTERNET website [www.toucanweb.co.uk](http://www.toucanweb.co.uk) or by email directly to the recorded email address for the Customer.

5.6.2 The Customer is solely responsible for providing TOUCAN with accurate and current contact information for the Customer's designated points of contact. TOUCAN will be relieved of its obligations in this agreement if TOUCAN's contact information for the Customer is out of date or inaccurate due to the Customer's action or omission or if TOUCAN's failure is due to reasons of Force Majeure or other circumstances beyond TOUCAN's reasonable control (as defined in clause 13 of these terms).

## 6. COMMENCEMENT and INITIAL PERIOD OF SERVICE

The Service shall be for an initial period as specified on the Order Form (where completed). The Service, unless otherwise agreed on the Order Form (where completed), shall be provided for an Initial Contract Term of twelve months. The Initial Contract Term shall commence upon connection. Connection shall be deemed to be effected when the link is first live to the your Site or other such point as requested by you, to the network and server facilities provided by TOUCAN.

## 7. BANDWIDTH UTILISATION

If the bandwidth or speed of Service used by you exceeds agreed quotas in a one month minimum period an excess charge will be payable by you at current published prices.

## 8. CONTENT and MISUSE

8.1 You will use all reasonable endeavours to ensure that the TOUCAN Service is used or includes content that conforms to the laws of this country and will not knowingly permit any illegal use or such use that will bring TOUCAN into disrepute.

8.2 You must not, nor must any other person, use the Service: to send or receive any material which is offensive, abusive, indecent, obscene, pornographic or menacing, or in breach of confidence, copyright, privacy or any other rights, to cause annoyance, inconvenience or needless anxiety, or in breach of any provisions as contained within clauses 3 and 4 of this Contract, or other than in conformance with the acceptable use policies of any connected networks and the Internet standards.

## 9. CHARGES and PAYMENT

9.1 All payments must be in UK Pounds Sterling. If your cheque is returned by the bank as unpaid for any reason, you will be liable for a "returned cheque" charge of £25.

9.2 All Charges payable by you for the Services shall be in accordance with the scale of charges and rates published from time to time by us on our web site or on the Order Form (where completed) and shall be due and

payable in advance of our Service provision. Charges are exclusive of 'Value Added Tax' which shall, if applicable, be paid additionally by you at the rate prescribed by law on submission by us of a proper VAT invoice.

9.3 You acknowledge that our Services are provided using facilities provided to us by third parties; TOUCAN shall have the right, subject to 14 days prior written notice to you, to increase our Charges at any time during the Initial Contract Term or any Extension Term, whether to reflect increase costs to us from such third parties or otherwise. However, if such increase exceeds 10% of the Charge in question prior to such notice you shall be entitled to terminate the Contract by written notice to us given by you within 7 days after service of our notice of increase to you. If you do so terminate, you will remain liable for all Charges (at the previous rate) up to the date the Contract ends.

9.4 All charges unless otherwise agreed are payable in advance. Unless otherwise specified and agreed, set-up and installation charges are payable on order. TOUCAN agrees to be party to this Contract upon TOUCAN's acceptance of cleared funds covering first invoice or the first payment under the Order Form (where completed). Recurring charges are payable on connection as defined in subclause 5.1 of this agreement and thereafter on or before the same day (the due date) of all subsequent months during the Initial Contract Term or any Extension Term. If payment is not received on or before the due date TOUCAN reserves the right to immediately withdraw, suspend or limit Service and will charge the User interest at the rate of 3% of the amount overdue per month.

9.5 All new Web and Email Server clients have the right to terminate this Contract by giving written notice of termination, by post or by e-mail, within 30 days after the date on which Service is first provided. In this event TOUCAN will refund all monies paid for the 1st year's Service but all charges for additional Services and setup fees provided within this period are non-refundable.

9.6 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 shall be entitled forthwith to suspend the provision of Services to you. If such a suspension is imposed, you will be liable for a "reconnection" charge of £25.

9.7 If suspension of service occurs for any reason you will be liable for a "reconnection" charge of £25 per service.

## 10. DEFAULT

10.1 If you do not pay the charges in accordance with the provisions of clause 9 of this Contract, or break this Contract in any other way, or are subject to bankruptcy or insolvency proceedings TOUCAN can (without prejudicing, losing or reducing any other right or remedy) suspend Service, wholly or partially, without notice (but the User remains liable during the suspension to pay charges for Service), or terminate this Contract by immediate notice, without prejudice to TOUCAN's pre-existing rights.



10.2 Bankruptcy or insolvency proceeding means bankruptcy proceedings or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress, diligence or seizure: or if the User is a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.

10.3 You continue to be liable to pay all charges which are due for Service during any period in which you do not comply with this Contract.

10.4 On termination of this Agreement or suspension of the Services we shall be entitled immediately to block your Server Facilities and to remove all data located on it. We shall be entitled to delete all such data but we may at our discretion hold such data for such period as we may decide, to allow you to collect it at your expense, subject to payment in full of any amounts withstanding and payable to us. We shall further be entitled to post such notice in respect of the non-availability of your Server Facilities as we think fit.

10.5 For so long as any sum due to TOUCAN hereunder is unpaid or any other amount is due to or properly claimed by TOUCAN from you for services or goods supplied or for any other reason, whether pursuant to these terms or otherwise, TOUCAN shall be entitled to retain any property owned by you or lawfully in your custody or possession and which is held by TOUCAN or by its agents until such time as all amounts due to TOUCAN are paid and/or any issue between you and TOUCAN is determined.

10.6 If TOUCAN waives a breach of Contract by you, that waiver is limited to the particular breach. Any delay by TOUCAN in acting upon a breach is not to be regarded in itself as a waiver.

## 11. TERMINATION OF SERVICE

11.1 Service may be terminated by either party on giving at least 30 days notice to the other expiring on the last day of the Initial Contract Term or at any time thereafter.

If TOUCAN gives notice you shall pay all charges up to the expiry of the notice. If you give notice, you shall pay all charges as provided in subclause 11.5.

11.2 TOUCAN reserves the right during the Initial Contract Term and at any time thereafter to terminate this Contract by giving to you not less than 30 days prior written notice of termination.

11.3 After the expiry of the Initial Contract Term you may terminate the Service by giving not less than 30 days prior written notice of termination, but subject to subclause 11.4.

11.4. Your notice does not avoid any other liability for Service already provided.

11.5 The Contract is a yearly contract and if you continue Service beyond your Initial Contract Term you will be liable to pay for the remainder of the then current Extension Term even though Service ends before the end of the Extension Term.

## 12. 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 the Order Form or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent 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.

## 13. MATTERS BEYOND TOUCAN'S REASONABLE CONTROL

TOUCAN is not liable for any breach of this Contract or liable for any delay or failure in performance of any part of these conditions and its commitments when caused as a result of Force Majeure, war, civil disorder, industrial disputes, inclement weather, acts of local or central government or other competent authorities, and failure by other service providers.

## 14. LIABILITY

14.1 You acknowledge that TOUCAN has no control over the information transmitted via the Service and that TOUCAN does not examine the use to which you put the Service or the nature of the information you are sending or receiving. TOUCAN hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.

14.2 TOUCAN undertakes no liability whatsoever for the acts or omissions of other providers of telecommunication service or for faults in or failures of their apparatus.

14.3 TOUCAN is not in any way liable in contract or otherwise for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.

14.4 TOUCAN makes no warranty as regards to its Services or equipment and will not be responsible for any

damage allegedly suffered or claimed by you for any reason including but not limited to loss of data, wrong or non deliveries and Service interruptions.

14.5 All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to subclause 14.6.

14.6 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.

14.7 Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim.

14.8 In any event no claim shall be brought unless you have notified us of the claim within one year of it arising.

## 15. INDEMNITY

You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by us in consequences of your breach or non-observance of this Agreement.

## 16. INTELLECTUAL PROPERTY RIGHTS

You shall obtain any and all necessary consents and clearances to enable you lawfully to make use of all and any intellectual property rights through the Services, including without limitation, clearance and/or consents in respect of your proposed domain name.

## 17. ASSIGNMENT

You may assign all or part of this Contract to any other party only with the prior written agreement of TOUCAN. TOUCAN reserves the right to assign all or part of this Contract at any time to any subsidiary or associate company of TOUCAN.

#### 18. LAW

This Agreement shall be governed by and construed in accordance with English law and you hereby submit to the non-exclusive jurisdiction of the English courts.

#### 19. HEADINGS

Headings are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

#### 20. ENTIRE AGREEMENT

These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral: between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.