

THECODEWORKS - SERVICE AGREEMENT TERMS AND CONDITIONS

1. SERVICES.

This Service Agreement (“**Agreement**”) applies to the purchase of all services (collectively, the “**Services**”) ordered by you on the Registration Form. TheCodeWorks reserves the right to amend its Service offerings and add, delete, suspend or modify the terms and conditions of the Services, at any time and from time to time, and to determine whether and when any such changes apply to both existing or future customers.

2. BILLING AND PAYMENT.

You shall pay the fees and other charges for each Service as provided in the Registration Form. TheCodeWorks reserves the right to change rates by notifying you sixty (60) days in advance of the effective date of the change; provided that TheCodeWorks shall not change any rates during the term of any Term Commitment. Service charges shall be invoiced in accordance with the terms and conditions set forth herein. All payments shall be made in U.S. currency. Accounts unpaid after the Due Date for a prolonged period of time determined by and at the discretion of TheCodeWorks may have service suspended or terminated. Such suspension or termination shall not relieve you of your obligation to pay the fee due. You agree to pay TheCodeWorks its reasonable expenses, including attorney’s fees and collection agency fees, incurred in enforcing its rights under this Agreement. You shall pay all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the Services and the sale of any service, except that taxes based on TheCodeWorks net income shall be the responsibility of TheCodeWorks.

- Reactivation of a closed or suspended account will be assessed a **\$25.00 reactivation fee**.

3. TERM.

Domain name registration services shall be for the term indicated on the registration application. Domain name registration agreements will be renewed and terminated on the terms indicated above (“**Additional Terms for Domain Name Registrations**”), and in the Domain Name Registration Agreement, Domain Name Dispute Policy and related agreements that you will be asked to review and must agree to during the registration process. For all Services other than domain name registration services, this Agreement shall be for the term specified by you on the Registration Form. With regard to such other Services, this Agreement will be automatically renewed at the end of the initial term for the same term specified by you on the Order Form unless you provide sixty (90) days written notice to TheCodeWorks of termination of this Agreement.

4. ACCEPTABLE USES.

You shall at all times adhere to TheCodeWorks **Acceptable Use Policy** located at [.http://www.thecodeworks.com/terms_of_use.pdf](http://www.thecodeworks.com/terms_of_use.pdf), as amended from time to time by TheCodeWorks effective upon posting of the revised policy at the URL. Notwithstanding anything to the contrary contained herein, TheCodeWorks may immediately take corrective action, including disconnection or discontinuance of any and all Services, or terminate this Agreement in the event of notice of possible violation by you of the TheCodeWorks Acceptable Use Policy. In the event TheCodeWorks takes corrective action due to a violation of the TheCodeWorks Acceptable Use Policy, TheCodeWorks shall not refund to you any fees paid in advance of such corrective action.

5. IP ADDRESS OWNERSHIP.

TheCodeWorks shall maintain and control ownership of all IP numbers and addresses that may be assigned to you by TheCodeWorks, in its sole discretion, and has the right to change or remove any and all such IP numbers and addresses.

6. CACHING.

You expressly (i) grant to TheCodeWorks a license to cache the entirety of your Web Site, including content supplied by third parties, hosted by TheCodeWorks under this Agreement and (ii) agree that such caching is not an infringement of any of your intellectual property rights or any third party’s intellectual property rights.

7. CPU USAGE.

You agree that you shall not use excessive amounts of CPU processing on any of TheCodeWorks’ servers. Any violation of this policy may result in corrective action by TheCodeWorks, in its sole discretion, including assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement. In the event that TheCodeWorks elects to take any corrective action, you shall not be entitled to a refund of any fees paid in advance prior to such corrective action.

8. BANDWIDTH AND DISK USAGE.

You agree that bandwidth and Disk usage shall not exceed the number of megabytes per month for the Services ordered by you on the Registration Form. This usage shall be monitored and measured by TheCodeWorks. Any bandwidth or Disk usage in excess of the agreed upon number of megabytes per month may result in corrective action by TheCodeWorks, in its sole discretion, including assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement. In the event that TheCodeWorks elects to take any corrective action, you shall not be entitled to a refund of any fees paid in advance prior to such corrective action.

THECODEWORKS - SERVICE AGREEMENT TERMS AND CONDITIONS

9. E-COMMERCE.

You will be solely responsible for the development, operation and maintenance of your online store and products and all contents and materials appearing online or on your products, including without limitation (a) the accuracy and appropriateness of content and materials appearing within the store or related to your products, (b) ensuring that the content and materials appearing within the store or related to your products do not violate or infringe upon the rights of any third party, and (c) ensuring that the content and materials appearing within the store or related to your products are not libelous or otherwise illegal. You will be solely responsible for the final calculation and application of shipping and sales tax. You will also be solely responsible for accepting, processing, and filling any customer orders, and for handling any customer inquiries or complaints arising therefrom. You are also responsible for the security of any customer credit card numbers and related customer information you may access as a result of conducting electronic commerce transactions through your Web Site. You will keep all such information confidential and will use the same degree of care and security as you use with your confidential information.

10. DISCLAIMER OF WARRANTY.

You acknowledge and agree that TheCodeWorks exercises no control over, and accepts no responsibility for, the content of the information passing through TheCodeWorks' host computers, network hubs and points of presence (the "TheCodeWorks") or the Internet. NEITHER THECODEWORKS, ITS EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS, THIRD-PARTY INFORMATION PROVIDERS, MERCHANTS, LICENSORS NOR THE LIKE MAKE ANY WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT FOR THE SERVICES OR ANY EQUIPMENT THECODEWORKS PROVIDES. NEITHER THECODEWORKS, ITS EMPLOYEES, AFFILIATES, AGENTS, THIRD-PARTY INFORMATION PROVIDERS, MERCHANTS, LICENSORS OR THE LIKE, WARRANT THAT THE SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE; NOR DO ANY OF THEM MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION SERVICED OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THE SERVICES. THECODEWORKS IS NOT LIABLE FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM YOU OR STORED BY YOU OR ANY OF YOUR CUSTOMERS VIA THE SERVICE(S) PROVIDED BY THECODEWORKS

12. INDEMNIFICATION.

You will indemnify, defend and hold harmless TheCodeWorks and its employees, officers, directors and agents (collectively "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and expenses (including but not limited to reasonable attorneys' fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to the use of the Services, including any violation of the TheCodeWorks Acceptable Use Policy.

13. LIMITATION OF LIABILITY.

IN NO EVENT SHALL THECODEWORKS OR ITS EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS, THIRD-PARTY INFORMATION PROVIDERS, MERCHANTS, LICENSORS OR THE LIKE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR USE, BY YOU OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR STRICT LIABILITY OR OTHER LEGAL THEORY, EVEN IF THECODEWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event will TheCodeWorks' liability for any damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) exceed the actual dollar amount paid by you for the Service which gave rise to such damages, losses and causes of actions during the 12-month period prior to the date the damage or loss occurred or the cause of action arose.

14. FORCE MAJEURE.

TheCodeWorks shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications or third party services (including DNS propagation), failure

15. GOVERNING LAW.

The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to its conflict of laws principles.

16. AMENDMENT; WAIVER.

Except as otherwise provided herein, this Agreement may not be amended except upon the written consent of you and TheCodeWorks. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. The waiver by any party of the time for performance of any act or condition hereunder shall not constitute a waiver of the act or condition itself.

17. ASSIGNMENT; SEVERABILITY.

This Agreement shall be binding upon and inure to the benefit of you, TheCodeWorks and our respective successors, and assigns. You may not assign this Agreement without the prior written consent of TheCodeWorks. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

THECODEWORKS - SERVICE AGREEMENT TERMS AND CONDITIONS

18. INTELLECTUAL PROPERTY VIOLATIONS

By engaging in any activity that infringes or misappropriates the intellectual property rights of others, including but not limited to copyrights, trademarks, service marks, trade secrets, software, and patents held by other individuals, corporations or other entities. Our Company is required by law to respond immediately to a copyright infringement and block access to customer content upon receipt of an official notice of a copyright violation. For more information on the Digital Millennium Copyright Act (DMCA), click on the following link: <http://lcweb.loc.gov/copyright/legislation/dmca.pdf>. Common instances leading to intellectual property violations involve the unauthorized use of pictures, framing another's website within your own without permission, and using another's trademarks without their permission to promote competing goods or services.

19. THE DIGITAL MILLENIUM COPYRIGHT ACT (DMCA) PROCEDURES:

When we receive proper notice that your website infringes the copyrights of another, we have a legal obligation, per Title 17 United States Code, Section 512, to "respond expeditiously to take the material down or block access to it." The procedure we follow, given our reading the DMCA [Title 17 United States Code, Section 512(c)(3)], is as follows:

If we receive "proper notification" (or court order) of an infringing website, we "deactivate" the website and send an email notice to both our customer and the individual or organization issuing the "proper notification."

If we receive "notification," but it is not proper, we will use our best judgment to ascertain whether the website does indeed infringe on the copyrights asserted by the notification. If we deem the website to infringe, we follow the activities in Step 1 above. If we cannot validate infringing activity, we will not "deactivate" the website, but instead send an email notice to both Customer and the individual or organization issuing the "notification" (hereinafter "**Complaining Party**") with a statement that we opted to not "deactivate" the website because notice was not proper, and we could not determine copyright infringement; and we then request either "proper notification" or a court order.

If we do "deactivate" your website because of "proper notification" (not court order), you can submit a "proper counter notification" to us indicating that "the material was removed or disabled through mistake or misidentification," we have 10-14 business days (legally, although we will attempt to do this in 24 hours or less) to reactivate your website after receiving proper counter notification, assuming you (or we) have not received a court order to the contrary.

Proper Notice of Copyright Infringement: [Title 17 United States Code, Section 512(c)(3)(A)]. For "proper notice," we require (1) a physical or electronic signature of copyright holder or authorization to act on behalf the copyright holder; (2) Identification of the copyright work alleged to be infringed on the website; (3) Identification of the material that is infringing or the subject of infringing activity; (4) Information necessary for us to contact the Complaining Party; (5) A statement that the Complaining Party has a good-faith belief that material alleged to be infringing is not authorized by the copyright holder; and (6) A statement that "the information in the notification is accurate, and under penalty of perjury, that the Complaining Party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."

Proper Counter Notification: [Title 17 United States Code, Section 512(g)(3)]. For "proper counter notification," we require (1) Your physical or electronic signature; (2) Identification of the material which has been removed, disabled or deactivated; (3) A statement "under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;" and (4) Your name, address, telephone number and a statement that you "consent to the jurisdiction of Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, for the United States District Court, District of Indiana, and that you will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person."

Deactivation: Deactivation does not necessarily mean deletion. Unless under court order, or if we judge your website content to contain prohibited content, we will not delete your website content when deactivated because of "proper notification" of copyright infringement. Your website content will remain on our servers for as long as your account remains in good standing with Company.

THECODEWORKS - SERVICE AGREEMENT TERMS AND CONDITIONS

20. TRADEMARK INFRINGEMENT

Trademark Infringement is any use of a trademark, service mark, trade dress or other identifying mark, word, phrase, color, picture or layout that could lead to a likelihood of confusion between you and the legitimate holder of a valid trade or service mark. For the purposes of this AUP, a "valid trade or service mark" is defined as another entity that either has a registered mark in a WTO signatory country (http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm), or can prove prior use. There are relatively few "safe harbor" provisions or exceptions in United States Trademark law that limit our liability to a Customer's infringing activity of a trademark. Therefore, we take notices of alleged trademark infringement seriously, and with few exceptions, will require Customers to quickly comply. There are fair use exceptions to trademark protections. We will allow Customer to use another's trademark in fair use situations, but we apply a rather restrictive view on the meaning of fair use. If there is any possibility of a likelihood of confusion as to the originator of the offerings (product, service or information) on your website, we will side with the complaining party.

Alleged Trademark Infringement Procedure:
When our Company receives notice of alleged trademark infringement activity, we will act as follows:

Submit a notice to the Customer.

If we believe there is any merit to the notice, we will give the Customer a predetermined amount of time (usually 48 hours) to take corrective action or provide unequivocal proof of either (a) permission to use trademark, or (b) that the Customer's use of trademark is superior to complaining party.

If the Customer fails to take corrective action, or fails to respond with unequivocal proof as required above, we will deactivate the account.

Attn: Jamey D. Aebersold
TheCodeWorks
P.O. Box 146
Floyds Knobs, IN 47119

Phone: (812) 923-6122
Fax: (812) 923-1971