

## **MOBICART TERMS OF SERVICE**

### **1 DEFINITIONS**

- 1.1 In this Agreement the following words and expressions shall have the following meanings:
- 1.1.1 "downtime" means any service interruption in the availability to visitors of the Website;
  - 1.1.2 "intellectual property rights" means patents, trade marks, design rights, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, whether registrable or not in any country;
  - 1.1.3 "IP address" stands for internet protocol address which is the numeric address for the server;
  - 1.1.4 "ISP" stands for internet service provider;
  - 1.1.5 "server" means the computer server equipment operated by the Supplier in connection with the provision of the Services;
  - 1.1.6 "the Services" means web hosting, and any other services or facilities provided by the Supplier;
  - 1.1.7 "spam" means sending unsolicited and/or bulk emails;
  - 1.1.8 "virus" means a computer programme that copies itself or is copied to other storage media, including without limitation magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs, and destroys, alters or corrupts data, causes damage to the user's files or creates a nuisance or annoyance to the user and includes without limitation computer programs commonly referred to as "worms" or "trojan horses";
  - 1.1.9 "visitor" means a third party who has accessed the Website;
  - 1.1.10 "the Website" means [www.mobi-cart.com](http://www.mobi-cart.com)
- 1.3 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.4 The headings of the paragraphs of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

## **2 INTRODUCTION**

- 2.2 The Supplier provides software as a service and has agreed to host the Customer's data upon the following terms and conditions.

## **4 CHARGES AND PAYMENT**

- 4.1 The Customer shall pay the Charges for the Services in accordance with the Terms of Payment as specified to this Agreement.
- 4.2 The Charges are exclusive of VAT (EU only), which if payable shall be paid by the Customer.
- 4.3 The Supplier shall be entitled to charge interest in respect of late payment of any sum due under this Agreement, which shall accrue from the date when payment becomes due from day to day until the date of payment.

## **5 IP ADDRESSES**

- 5.1 The Supplier shall maintain control and ownership of the IP address that is assigned to the Customer as part of the Services and reserves the right in its sole discretion to change or remove any and all IP addresses.
- 5.2 Where the Supplier changes or removes any IP address it shall use its reasonable endeavours to avoid any disruption to the Customer.

## **6 SOFTWARE LICENCE AND RIGHTS**

- 6.1 If the Customer requires use of software owned by or licensed to the Supplier ("the Supplier's software") in order to use the Services, the Supplier grants to the Customer and its employees, agents and third party consultants and contractors, a royalty-free, world-wide, non-transferable, non-exclusive licence to use the Supplier Software in object code form only, in accordance with the terms of this Agreement. For the avoidance of doubt, this Agreement does not transfer or grant to the Customer any right, title, interest or intellectual property rights in the Supplier Software.
- 6.3 The Customer undertakes that he will not himself or through any third party, sell, lease, license or sublicense the Supplier Software. If the Customer is permitted under this Agreement or by law to make any copies of the Supplier Software, the Customer must reproduce all proprietary notices of the Supplier, if any, on the copies.
- 6.4 The Supplier may make such copies of the Customer Content as may be necessary to perform its obligations under this Agreement, including back up copies of the Content. Upon termination or expiration of this Agreement, the Supplier shall destroy or deliver to the Customer all such copies of the Content and other materials provided by the Customer as and when requested by the Customer.

## **7 SERVICE LEVELS**

The Supplier shall use its reasonable endeavours to make the server and the Services available to the Customer but because the Services are provided by means of computer and telecommunications systems, the Supplier makes no warranties or representations that the Service will be uninterrupted or error-free and the Supplier shall not, in any event, be liable for interruptions of Service or downtime of the server.

## **8 ACCEPTABLE USE POLICY**

- 8.1 The Website and use of the Services may be used for lawful purposes only and the Customer may not submit, publish or display any content that breaches any law, statute or regulation. In particular the Customer agrees not to:
- 8.1.1 use the Services or the Website in any way to send unsolicited commercial email or "spam", or any similar abuse of the Services;
  - 8.1.2 send email or any type of electronic message with the intention or result of affecting the performance of any computer facilities;
  - 8.1.3 publish, post, distribute or disseminate defamatory, obscene, indecent or other unlawful material or information, or any material or information which infringes any intellectual property rights, via the Services or on the Website;
  - 8.1.4 threaten, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
  - 8.1.5 engage in illegal or unlawful activities through the Services or via the Website;
  - 8.1.6 make available or upload files to the Website or to the Services that the Customer knows contain a virus, worm, trojan or corrupt data; or
  - 8.1.7 obtain or attempt to obtain access, through whatever means, to areas of the Supplier's network or the Services which are identified as restricted or confidential.
- 8.2 The Customer has full responsibility for the content of the Website. For the avoidance of doubt, the Supplier is not obliged to monitor, and will have no liability for, the content of any communications transmitted by virtue of the Services.
- 8.3 If the Customer fails to comply with the Acceptable Use Policy outlined in Clause 8.1 the Supplier shall be entitled to withdraw the Services and terminate the Customer's account.

## **9 ALTERATIONS AND UPDATES**

All alterations and updates to the Website shall be made by the Customer using the online account management facility. The Customer will be issued with a user name and password in order to access the account. The Customer must take all reasonable steps to maintain the confidentiality of this user name and password. If the Customer reasonably believes that this information has become known to any unauthorised person, the Customer agrees to immediately inform the Supplier and the password will be changed.

## **10 WARRANTIES**

- 10.1 The Customer warrants and represents to the Supplier that the Supplier's use of the Content or the Customer Software in accordance with this Agreement will not infringe the intellectual property rights of any third party and that the Customer has the authority to license the Content and the Customer Software to the Supplier as set out in Clause 6.2.
- 10.2 All conditions, terms, representations and warranties that are not expressly stated in this Agreement, whether oral or in writing or whether imposed by statute or operation of law or otherwise, including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded. In particular and without prejudice to that generality, the Supplier shall not be liable to the Customer as a result of any viruses introduced or passed on to the Customer.

## **11 INDEMNITY**

The Customer agrees to indemnify and hold the Supplier and its employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against the Supplier arising out of any breach by the Customer of the terms of this Agreement or other liabilities arising out of or relating to the Website.

## **12 LIMITATION OF LIABILITY**

- 12.1 Nothing in these terms and conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.
- 12.2 The entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the charges paid for the Services under this Agreement in respect of which the breach has arisen.
- 12.3 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such

a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

### **13 TERM AND TERMINATION**

- 13.1 This Agreement will become effective on the date you signup and thereafter shall continue until terminated by either party.
- 13.2 The Supplier shall have the right to terminate this Agreement with immediate effect by notice in writing to the Customer if the Customer fails to make any payment when it becomes due.
- 13.3 Either party may terminate this Agreement forthwith by notice in writing to the other if:
  - 13.3.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
  - 13.3.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances; or
  - 13.3.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
  - 13.3.4 the other party ceases to carry on its business or substantially the whole of its business; or
  - 13.3.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 13.4 Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination.

### **14 ASSIGNMENT**

- 14.1 The Supplier may assign or otherwise transfer this Agreement at any time.
- 14.2 The Customer may not assign or otherwise transfer this Agreement or any part of it without the Supplier's prior written consent.

### **15 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside

its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet Service Provider, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

## **16 SEVERANCE**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## **17 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 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 2 days following the date of posting.

## **18 ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

## **19 GOVERNING LAW AND JURISDICTION**

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