

No Pickles Web Hosting & Design Terms of Use

No Pickles Web Hosting & Design Terms of Service

THE FOLLOWING TERMS OF SERVICE (TOS) APPLY TO ALL SERVICES PROVIDED BY NO PICKLES WEB HOSTING & DESIGN TO YOU. BY PURCHASING SERVICES FROM NO PICKLES WEB HOSTING & DESIGN YOU AGREE TO THESE TERMS OF SERVICE.

APPLICATION OF TERMS

- **1.1.** This TOS applies to all Services to be provided by No Pickles Web Hosting & Design to you during the Term. The TOS incorporates the following documents and policies by reference: our Acceptable Use Policy (AUP) and our Privacy Policy. Collectively, they are referred to in this document as the "TOS." Certain provisions of this TOS may not apply to you based on your Order.
- **1.2.** This TOS, together with your Order, represents the entire agreement relating to the Services and supersedes any agreements previously agreed between you and No Pickles Web Hosting & Design, except those covering confidentiality and non-disclosure. Any other contract provisions imposed by you by your own order forms or otherwise are expressly excluded.
- **1.3.** No Pickles Web Hosting & Design may alter this TOS at any time without notification to you. However, the current TOS is always available on our website. Your sole remedy in the event that you do not agree to any amendments shall be to provide us with written notice of termination within [10] business days of being notified of the amendment. Only an officer of No Pickles Web Hosting & Design may alter this TOS. No agent of, or person employed by or under contract with, No Pickles Web Hosting & Design has any authority to alter or vary this TOS in any way. No oral explanation or oral information given by any party shall alter this TOS.

ORDERS

- **2.1.** Each Order for Services by you shall be an offer by you to buy the Services from No Pickles Web Hosting & Design according to the terms of this TOS. No Order shall be deemed to be accepted by No Pickles Web Hosting & Design until we begin to design your Site. The date on which we provide notice to you that we have begun to design your Site is the Effective Date/the date you place the order for our No Pickles CMS is the Effective Date. The initial Term of the Services is set out on your Order and begins on the Effective Date.
- **2.2.** You must be over the age of 18 at the time you place your Order.
- **2.3.** All Orders will be reviewed by us to determine if they meet our financial, security and other reasonable criteria (Fraud Screen). You may not receive notice that your Order has been rejected because it fails to pass our Fraud Screen. We are unable to provide additional information about the reasons a particular Order fails to pass the Fraud Screen.
- **2.4.** No Pickles Web Hosting & Design shall not have an obligation to deliver any Services beyond those identified in the Order.
- **2.5.** You shall provide to us, at your cost, any information, resources or facilities reasonably requested by us for the delivery of the Services and, where necessary, ensure that your employees, contractors and other suppliers cooperate fully and promptly with us.
- **2.6.** Any instructions supplied by you to No Pickles Web Hosting & Design in relation to the Services must be complete, accurate and clearly legible. No Pickles Web Hosting & Design reserves the right to charge for any costs and any

additional work incurred by No Pickles Web Hosting & Design from a failure by you to comply with this provision; we shall not be liable for any errors caused by such a failure.

- **2.7.** We will provide web hosting services for the Site described in the Order (Site). Our web hosting services are provided to you pursuant to the Terms of Service and Acceptable Use Policy set out [on our website]. If you would prefer to host the Site with another entity you may do so. The Site for which you purchase our services cannot be hosted with another entity.

OWNERSHIP OF YOUR ACCOUNT

- **3.1.** Your contact information is set out in the "Customer Login" section in the customer area of your control panel.
- **3.2.** If you, on behalf of another person or entity, create an account, you warrant that you will administer the account in good faith and indemnify us against all losses and liabilities sustained by us should you administer the account in ways that are adverse to End User or result in any claim against us.
- **3.3.** For avoidance of doubt, the individual or entity set out in the Account Owner Information "Customer Login" section is considered by us to be the owner of the account. The individual or entity paying for the Services is not considered by us to be the owner. It is your obligation to ensure that you correctly indicate ownership of your account. If there is a dispute about ownership, the account will be locked until the parties to the dispute agree on a resolution, or until the matter is resolved judicially.

GENERAL TERMS AND CONDITIONS

- **4.1.** You will conform to the standards and acceptable use policies of No Pickles Web Hosting & Design as set out in our AUP.
- **4.2.** No Pickles Web Hosting & Design may disclose your name and address to a complaining individual if, in our reasonable discretion, it is necessary or appropriate to do so.
- **4.3.** The Services are provided to you as set out in the Order. You bear ultimate responsibility to ensure that the Services are designed to meet your operational, privacy and security needs. Your hardware, software and any other items you deem necessary to use the Services, must be compatible with the Services. You may not terminate an Order based on your inability to use the Services because such a use is incompatible with them.

PAYMENT

- **5.1.** You are responsible for the Fees set out on the Order. Fees are due on the date set out on your invoice (Due Date).
- **5.2.** You are responsible for all taxes and fees levied on the Service - other than those based on our net income.
- **5.3.** Invoices are payable by the Due Date without set-off or deduction. Unpaid invoices shall accrue interest at a rate of [1.5%]. We reserve the right to suspend the Service until we receive payment.
- **5.4.** Our obligation to provide the Service to you is contingent on your payment of the Fees by the Due Date. You must pay the Fees without set off or deduction. The Services are licensed to you during the time you pay the Fee. Your right to use the Services, and all items incorporated into the Services, other than Customer Content, terminates upon your failure to pay the Fee and/or termination of this TOS.

- **5.5.** Domain Names: Payment must be received 2 weeks before the renewal date or you risk losing your domain name. This means if your card is declining, expired or invalid we cannot renew the domain name. It is your responsibility to make sure your credit card is up to date. Payment entitles you to continue owning your domain. This is not for hosting services.
- **5.6.** If you believe there is an error on your invoice, you must contact us in writing. We each agree to work together in good faith to resolve any billing disputes. Your dispute must include sufficient facts for us to investigate your claims and be received by us at least five days prior to the Due Date (Dispute Deadline). You waive your right to dispute any charges or Fees if you fail to meet the Dispute Deadline. If we find that your claim is valid, we agree to credit the account that is the subject of the dispute on your next invoice. If you contact your credit card company, prior to notifying us of the dispute, and initiate a "chargeback" based on this dispute, and your chargeback claim is past the Dispute Deadline, you will be charged a \$50 investigation fee and a \$50 reactivation fee. This fee compensates us for the investigation your credit card issuer requires us to conduct in order to demonstrate our right to payment.
- **5.6.** We are pleased to provide you with a statement of account on your written request. This statement is based on our records. To ensure accounting consistency, we cannot alter the information in our records.
- **5.7.** We often offer special promotions, such as discounts or items provided at no charge (Special Promotions). These Special Promotions have specific terms, and generally do not apply to current customers. They do not apply to Renewal Terms. If you terminate the Services to which a Special Promotion applied, the discount, or other benefit provided by the Special Promotion, will be removed, and your account will be re-billed as if it had been set up without the Special Promotion. If this results in additional Fees, you will be charged for those Fees.

TERMINATION & CANCELLATION

Either party may terminate this Agreement upon written notice to the other if a party materially breaches any of these terms and the breaching party fails to correct the breach within ten days following the party's written notice, or immediately if the breach is incapable of cure.

6.1. Termination by TERMINATION & CANCELLATION

Either party may terminate this Agreement upon written notice to the other if a party materially breaches any of these terms and the breaching party fails to correct the breach within ten days following the party's written notice, or immediately if the breach is incapable of cure.

- **6.1.** Termination by No Pickles Web Hosting & Design
- **6.1.1.** No Pickles Web Hosting & Design may terminate this Agreement (i) if you fail to pay any sums due to No Pickles Web Hosting & Design as they fall due; (ii) if, in No Pickles Web Hosting & Design reasonable opinion, you do not have sufficient technical expertise to use the Service without excessive ongoing technical support; or (iii) you violate this TOS or any agreement incorporated into it by reference.
- **6.1.2.** We may terminate a particular Order, or aspect of the Services, if a Third Party ceases to make components of them available to us, or if providing them to you becomes cost prohibitive.
- **6.2.** Termination by you
- **6.3.** You must terminate the Services through your Control Panel (Termination Request). This is the only way to effectively terminate the Services. We will send you an email verification of the Termination Request (Termination Verification). You must acknowledge the Termination Verification to Terminate the Services. If you do not acknowledge

the Termination Verification, or, you fail to use a Termination Request to terminate the Services, the Services will not be terminated, and Fees will still be charged. You must follow this procedure in order to terminate each Service.

- **6.4.** Once you provide us with the Termination Verification, it will take us five calendar days to process the Termination. You are responsible for any Fees that accrue during this five-day period.

TECHNICAL SUPPORT

Our technical support is provided via the help desk set out on our website. Your initial request for technical support must originate there. Technical support is provided at our discretion, and during the hours set out on the help desk page. If your request for technical support exceeds that of similarly situated customers, or is based on your lack of sophistication, we may charge you our standard hourly rate for support. We will inform you, and receive your consent, prior to charging you for technical support. If you request technical support, you agree that we may have full access to your equipment, account and any and all items accessible to us based on your request. Because the technology underlying and supporting websites is complex, and in some cases unreliable, we do not guarantee that even with maintenance and technical support, the Site will always be functional. Maintenance and technical support is provided by us on a reasonable efforts basis.

INTELLECTUAL PROPERTY RIGHTS AND OTHER CONSENTS

- **8.1.** During the Term, and as long as you have paid the Fees, we grant you a non-exclusive, limited right to use the software, templates, animations, video, audio or other items incorporated into the Site by the Services (Licensed Material) in accordance with the terms and conditions of this TOS. You may not sublicense, resell or otherwise market the Licensed Material other than as a website. You may not use the Licensed Materials to compete with us.
- **8.2.** Other than the license to use set out in paragraph 8.1., you may not alter, merge or adapt the Licensed Material in any way. You may not: (i) remove, modify or obscure any copyright, trademark or other notices of proprietary rights; and/or (ii) reverse engineer, decompile or disassemble the Licensed Material.
- **8.3.** The Services shall not be "works made for hire" and/or you shall not own any interest in them. We retain rights in the underlying source code, standard functionality (including, but not limited to, content management system, web site structure, shopping cart, check out pages, coding, and scripts), and/or the Licensed Material, and have a lien on the Customer Content for unpaid Fees. We retain ownership, including the right to use, license, sell and otherwise commercialize the Licensed Material and/or the concepts developed by us in performing our work hereunder for other purposes, including, but not limited to, creating other websites which incorporate functional elements of the Services.
- **8.4.** If we have not provided a license for you to use software as part of the Services, you agree to procure appropriate licenses to use the software (Required Licenses). "Required Licenses" means any licenses, consents or approvals required to use, software, hardware and other items installed on the Site, or whose use is facilitated by the Service. You agree to provide us with copies of the Required Licenses promptly following our written request.
- **8.5.** You are solely responsible for obtaining all intellectual property rights in the intellectual property of others, including but not limited to clearances and/or other consents and authorizations necessary to use the names, marks or other materials which are used by you in, or transmitted via, the Site (Objects). On becoming aware of any dispute between you and any other individual or organization regarding the Objects, No Pickles Web Hosting & Design reserves the right, at its sole discretion and without notice or liability to you, to cease any further use of such Objects. This suspension includes, but is not limited to, deleting or suspending the Objects from its computer systems and/or to make appropriate representations or provide information to any relevant authority or interested party.

- **8.6.** From time to time you may provide us with information that may be used by us to improve the products and services we provide to you and other customers (Feedback Information). We shall own all intellectual property, and other rights in the Feedback Information. However, we shall have no ownership of Customer Content or your confidential information.

REPRESENTATIONS AND WARRANTIES

- **9.1.** Our Warranty. We represent and warrant: (i) that we will use commercially reasonable efforts to perform the Services in a professional and workmanlike manner; and (ii) that we have the right to provide all components of the Services to you. If components of the Services are licensed to us by third parties, this second warranty is limited by those licenses. Your sole and exclusive remedy for our breach of warranty is for us to re-perform the Services, select components of equivalent functionality, or, at our option, refund the Fees you have already paid to us for the Services that could not be performed.
- **9.2.** You represent and warrant that (i) you have the experience and knowledge necessary to use the Service; (ii) you and your End Users understand and appreciate the risks inherent to you and your business that come from accessing the Internet; (iii) you have sufficient knowledge about administering, designing and operating the functions contained in and facilitated by the Service necessary to take advantage of the Service; (iv) that you will not violate any applicable laws and/or regulations in your use of the Service; and (v) that you own all intellectual property rights in, or have a license to use, any information you provide to us necessary for us to perform the Service, or to any information transmitted by us through the Service.
- **9.3.** OTHER THAN AS SET OUT IN THIS TOS, WE MAKE NO WARRANTIES, AND ANY IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED. THE SERVICE IS PROVIDED AS-IS. YOUR USE OF THE SERVICE IS AT YOUR OWN RISK. WE DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL OTHER EXPRESS, AND/OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE WILL MEET ANY OR ALL OF YOUR EXPECTATIONS; WILL OPERATE IN ALL OF THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY YOU; OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. NO EMPLOYEE OR AGENT IS AUTHORIZED TO MAKE ANY WARRANTY ON OUR BEHALF.

LIMITATION OF LIABILITY

YOU AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU WILL NOT UNDER ANY CIRCUMSTANCES HOLD US OR OUR LICENSORS, AGENTS, EMPLOYEES, OFFICERS AND/OR THIRD PARTY VENDORS, LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, COST SAVINGS, REVENUE, BUSINESS, DATA OR USE, OR ANY OTHER PECUNIARY LOSS BY YOU OR ANY OTHER THIRD PARTY. YOU AGREE THAT THE FOREGOING LIMITATIONS APPLY WHETHER IN AN ACTION IN CONTRACT OR TORT OR ANY OTHER LEGAL THEORY AND APPLY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL WE BE LIABLE TO YOU IN THE AGGREGATE WITH RESPECT TO ANY AND ALL BREACHES, DEFAULTS, OR CLAIM OF LIABILITY UNDER THIS TOS FOR AN AMOUNT GREATER THAN THE FEES ACTUALLY PAID BY YOU TO US DURING THE THREE MONTH PERIOD PRECEDING A CLAIM GIVING RISE TO SUCH LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES; YOU AGREE THAT IN THOSE JURISDICTIONS OUR LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

INDEMNITY

Each party shall indemnify and hold the other harmless from, and at its own expense agrees to defend, or at its option to settle, any claim, suit or proceeding brought or threatened against the other party so far as it is based on a claim that the Customer Content on the one hand, or the Service (fully owned by us) supplied hereunder on the other, infringes any U.S. patent, copyright, or trademark, or that a Required Consent has not been procured. This paragraph will be conditioned on the party seeking indemnification notifying the other party promptly in writing of the claim and giving the party providing indemnification full authority, information, and assistance for the defense and settlement thereof. The party seeking indemnification shall have the right to participate in the defense of the claim at their expense. If, in our case, such a claim has occurred, or is likely to occur, you agree to permit us, at our option and expense, either to: (i) procure for you the right to continue using the Service; (ii) replace with a product or service, regardless of manufacturer, performing the same or similar function as the infringing Service, or modify the same so that it becomes non-infringing; or (iii) if neither of the foregoing alternatives is reasonably available, immediately terminate our obligations (and your rights) under this Agreement with regard to such Service. This shall be your sole and exclusive remedy for a U.S. patent, copyright, or trademark infringement claim based on this Agreement.

NOTICES

- **12.1.** You are required to provide notices to us about the Services through the Control Panel. We will provide notices to you using the information you provide to us in the "My Details" section of the Control Panel. We have no responsibility for misdirected notices based on your failure to provide correct information.
- **12.2.** Termination notices must be provided to us as set out in paragraph 6.2.

RESOLUTION OF DISPUTES & CHOICE OF LAW

- **13.1.** Any dispute, controversy or claim (individually and collectively a "Dispute") arising under this Agreement shall be resolved in accordance with the procedures set forth in this Section.
- **13.2.** In the event of a dispute between the parties relating to this Agreement, each of the parties shall appoint a designated representative who has authority to settle the dispute and who is at the "C" level or above. This appointment will take place no later than five business days after the initial request for dispute resolution. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve the dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one party to the other shall be honored. If the parties are unable to resolve issues related to a dispute within thirty days after a party's request is made, the dispute shall be submitted for arbitration. The arbitration shall take place in Denver, Colorado pursuant to the commercial arbitration rules of the American Arbitration Association. The dispute shall be heard by a single arbitrator who has experience in the field of web design. The arbitrator shall not be entitled to award punitive damages, or attorney's fees.
- **13.3.** If the procedures set out in the previous paragraph fail, the parties agree that all disputes shall be brought before the U.S. District Court for the (District Court). If the District Court may not consider the dispute, all disputes shall be brought before the Superior Court located in Washington, D.C. The parties agree that after the procedures in paragraph 13.2. above have been followed, these courts shall have exclusive jurisdiction over all disputes and other matters relating to the interpretation and enforcement of this Agreement or any other document entered into by the parties. Further, the parties agree that venue shall be proper in the appropriate court set out above, and agree that they shall not contest

notice from that court. State law issues concerning construction, interpretation and performance of this Agreement shall be governed by the substantive law of the District of Columbia, excluding its choice of law rules. The United Nations Convention on Contracts for International Sale of Goods shall not apply.

DEFINITIONS

- "End User" is the individual or entity who uses, or to whom you provide your services;
- "Fees" means the charges to be paid by you for the provision of the Services as set out in any Order or, if not set out on the Order, those set out on our website;
- "Objects" means any names, marks or materials and any other information, documents or software which you supply to No Pickles Web Hosting & Design under this Agreement;
- "Order" means the order form or purchase order, including electronic and online forms, or letter signed or submitted by you or on your behalf requesting Services;
- "Server" means the computer server equipment operated by No Pickles Web Hosting & Design in connection with the provision of the Services or operated by a Third Party or to which the Services are provisioned;
- "Service" or "Services" means any and all services provided by No Pickles Web Hosting & Design under this TOS including, without limitation, domain name registration services; domain name portfolio management services; domain name searching, monitoring and recovery services, space hosting, web, email and usenet searching and monitoring services and professional services and any other services requested by you which may be provided from time to time as set out on the portion of our website describing the individual Service (Product Pages);
- "Site" means the HTML, other code, pictures, and Customer Material, the details of which are set out on the Order, and which is the ultimate goal of the Service;
- "Space" means the area on the Server allocated by No Pickles Web Hosting & Design to you for use by you as a site on the Internet;
- "Term" means the period during which this Agreement binds the parties;
- "TOS" means these terms and conditions, including all documents incorporated by reference;
- "You" and "your" mean the person, firm or company who purchases Services from No Pickles Web Hosting & Design; and
- "We," "us" or "our" means No Pickles Web Hosting & Design.

MISCELLANEOUS

- **15.1.** 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.
- **15.2.** Your rights and obligations under this Agreement are personal to you, and you shall not assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.
- **15.3.** No Pickles Web Hosting & Design reserves the right to sub-contract any of the work required to fulfill the Services and to assign this Agreement.

- **15.4.** Except for the obligation to pay the Fees, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, fire, epidemics, failures of telecommunication carriers, delays of common carriers, or other circumstances beyond its reasonable control. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay. The party affected by such an occurrence shall notify the other party as soon as possible, but in no event less than ten days from the beginning of the event.
- **15.5.** 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.
- **15.6.** Paragraph headings have been included in this Agreement for convenience only and shall not be considered part of, or be used in interpreting, this Agreement.
- **15.7.** This Agreement does not create any agency, partnership, joint venture, or franchise relationship. Other than as set out herein, neither party has the right or authority to, and shall not, assume nor create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

Copyright and Trademark Notice

No Pickles Web Hosting & Design website and its contents, including, but not limited to all included text, photographs, graphics, illustrations, video, sound, and other material (all these collectively referred to as "Content") are protected under United States and international copyright laws and are the property of No Pickles Web Hosting & Design or its third-party licensors. All rights reserved. All logos, splash screens, page headers, custom graphics, and button icons displayed on the No Pickles Web Hosting & Design are service marks and/or trademarks of No Pickles Web Hosting & Design or its third-party licensors. Copying, distributing, transmitting, displaying, modifying, selling, or participating in the sale of, or otherwise exploiting or using any Content or any marks in any form or by any means without the express written permission of the Company is strictly prohibited and shall violate the international copyright or trademark laws, those of the United States and/or other countries.

Telephone Monitoring

The Customer acknowledges that all incoming and outgoing telephone calls between you and any representative or staff member of the Company may be monitored and recorded for quality control purposes only.