



Spencer Web Design, Inc.

Design & Development • Content Management • Search Engine Optimization • Digital Marketing

Hosting Agreement

This Web Hosting Agreement (the "Agreement") sets forth the terms and conditions of your use of Spencer Web Design, Inc. for web hosting services. You certify that you are at least 18 years of age. To become our account holder, you must read and agree to be bound by all terms and conditions of this Agreement, the fee schedules and any policies that are or may be published by us. This Agreement will become effective when any account order is placed and accepted. By posting notice 30 days in advance at a web page available on our web site we may modify the terms and conditions of this Agreement or the prices of its services, as well as discontinue or change the services offered. You will be bound by the modified Agreement, prices and/or policies if you continue to use the services.

1. Scope of Services and Your Obligations

1.1. This Agreement defines the terms and conditions of our services as offered by Spencer Web Design, Inc. and used by you, specifically the provision of web hosting services on our servers (the "Services"). We will provide the Services for the amount of server storage space selected in exchange for payment of fees and full compliance with the terms and conditions of this Agreement.

1.2. You are responsible for producing, electronically uploading and maintaining HTML files, execution scripts, applets and applications (the "Upload Materials") to your website, and you hereby warrant that all Upload Materials shall be owned or properly licensed by you and shall not adversely impact the Services or violate any rights of any third parties. You are responsible for ensuring that all Upload Materials will function properly and as intended. You are responsible for all activity originating from your website, unless proven to be a victim of outside hacking or address forgery. You assume responsibility for all material on your website that may be put on by a third party (such as the usage of Free For All links pages). Use of the Services requires a certain level of knowledge in the use of Internet languages, protocols, and software, which can vary depending on your anticipated use and desired content of your website. You acknowledge that you have the necessary knowledge to create, modify and maintain your website. We assume no responsibility to provide you with such knowledge.

1.3. In connection with the Services, we may provide for your use certain tools and software. Access to these Tools may be available through a Control Panel. To the extent that such Tools are provided to you, you are granted a nonexclusive, nontransferable license to use the Tools in object-code form only for your internal use, solely in connection with the Services provided under this Agreement.

1.4. We reserve the right to monitor our systems electronically and to access and disclose any information as permitted or required by any law, regulation or other governmental request to operate its systems properly, to protect itself or its accountholders or for any other reason it in good faith deems necessary. We reserve the right to report to law enforcement any suspected illegal activity we become aware of. It is not our intention that our Services or facilities be used in contravention of the Communications Decency Act of 1996 (the "CDA") or any other applicable law.

1.5. You agree to comply with the requirements of the CDA and the Digital Millennium Copyright Act (the "DMCA") and acknowledge that we are a "service provider" under the DMCA and are therefore immune from liability under the DMCA, including 17 U.S.C. § 512. Consistent with the DMCA, we will accommodate standard technical measures used to identify and protect copyrighted works, and, as further described herein, we have a policy of terminating accountholders who are copyright infringers.

2. Limited Warranty; Limitation of Liability; Indemnification

2.1. Limited Warranty. You acknowledge that the Services are provided "as is." Neither we, nor any of our employees or agents, warrants that the Services will be uninterrupted, error free or free from viruses or other harmful components. We

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are not responsible for and hereby disclaim any warranties, either expressed or implied, regarding the quality, accuracy, or validity of the data and/or completeness, non-infringement, merchantability or fitness for a particular purpose of information available on its servers or residing on or passing through its interconnecting networks. Use of information obtained from or through the Services is at your risk. Under no circumstances will we be liable to you or any other person for any loss or damage caused by your reliance on information available on its servers or obtained through the Services.

2.2. Limitation of Liability. IN NO EVENT SHALL WE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND DAMAGES RELATED TO CORRUPTION OR DELETION OF WEBSITE CONTENTS) ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE OUR SERVICES (INCLUDING, BUT NOT LIMITED TO, INOPERABILITY OF OUR SERVERS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OUR MAXIMUM LIABILITY EXCEED THE TOTAL AMOUNT PAID BY YOU TO US FOR THE SERVICES DURING THE PRIOR TWELVE (12) MONTHS. TO THE EXTENT APPLICABLE STATE LAW DOES NOT ALLOW THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, OUR LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW.

2.3. Indemnification. You agree to indemnify, defend and hold us and our affiliates, directors, officers, employees and agents harmless from and against any liabilities, losses, damages or costs, including reasonable attorneys' fees, resulting from any third-party claim, action, dispute or demand related to your use of the Services, your violation of any of the provisions of this Agreement or from your placement or transmission of any materials or content onto our servers. Such liabilities may include, but are not limited to, those arising from the following: (a) with respect to your business, (i) infringement or misappropriation of any intellectual property rights; (ii) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity; or (iii) spamming, or any other offensive, harassing or illegal conduct or violation of the acceptable uses described herein or anti-spam policy; (b) any damage or destruction to our equipment or to any other account holder, which damage is caused by or otherwise results from acts or omissions by you, your representative(s) or your designees; (c) any personal injury or property damage arising out of your activities related to the Services, unless such injury or property damage is caused solely by our gross negligence or willful misconduct; and (d) any other damage arising from your equipment or your business.

3. Payment of Fees

3.1. We will notify you via email of any fee increases 30 days before such increases take effect.

3.2. You agree to provide us with accurate and complete billing information, including your legal name, address, telephone number, email address and applicable payment date and to update this information immediately if any change occurs. Payments must be submitted in advance of receiving the Services.

3.3. You acknowledge responsibility for your account until payment in full is made and agree to pay all fees associated with collecting overdue balances.

4. Acceptable Uses

4.1. Use and Misuse of the Services. All complaints of abuse, violation and misuse of the Services, whether described in this Section 4 or otherwise, shall be investigated promptly. You are responsible for all use of your website, with or without your knowledge or consent. You agree to use the Services only for lawful purposes, in compliance with all applicable laws. Linking to illegal material is also prohibited.

When we becomes aware of possible violations of this Agreement, we may initiate an investigation that may include gathering information from you and the complaining party, if any, and examination of material on our servers. We in our sole discretion, will determine what action will be taken in response to a violation on a case-by-case basis. Violations of this Agreement could subject you to criminal or civil liability.

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BY ACCEPTING THIS AGREEMENT, YOU AGREE TO WAIVE AND HOLD US HARMLESS FROM ANY CLAIMS RELATING TO ANY ACTION TAKEN BY US AS PART OF ITS INVESTIGATION OF A SUSPECTED VIOLATION OF THIS AGREEMENT OR AS A RESULT OF ITS CONCLUSION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. THIS MEANS THAT YOU CANNOT SUE OR RECOVER ANY DAMAGES WHATSOEVER FROM US AS A RESULT OF OUR DECISION TO REMOVE MATERIAL FROM ITS SERVERS, WARN YOU, SUSPEND OR TERMINATE YOUR ACCOUNT, OR TAKE ANY OTHER ACTION DURING THE INVESTIGATION OF A SUSPECTED VIOLATION OR AS A RESULT OF OUR CONCLUSION THAT A VIOLATION HAS OCCURRED. THIS WAIVER APPLIES TO ALL VIOLATIONS DESCRIBED IN THIS AGREEMENT.

4.2. Use and Misuse of Materials. Materials in the public domain (e.g., images, text, and programs) may be downloaded, uploaded or re-distributed. You assume all risks regarding the determination of whether the material is in the public domain.

You are prohibited from storing, distributing or transmitting any unlawful material through the Services. Examples of unlawful material include, but are not limited to, threats of physical harm, child pornography, and copyrighted, trademarked and other proprietary material used without proper authorization. Pornography and sex-related merchandising, or links to such material, even if legal, are not acceptable uses of our servers. You may not post, upload or otherwise distribute copyrighted material on our servers without the consent of the copyright holder.

Unacceptable uses of website content also include the presence of the following programs or the activities associated with them, regardless of whether or not any actual intrusion results in the corruption or loss of data: server broadcast messages or any message sent on an intrusive basis to any directly or indirectly attached network; attempts to circumvent any user authentication or security of host, network, or account; accessing data not intended for user; probing the security of any network; spawning dozens of processes; port scans, ping floods, packet spoofing, and forging router information; denial of service attacks, sniffers, flooding, spoofing, ping bombing, smurfs, winnuke, land and teardrop; promulgation of viruses; and IRC bots, such as eggdrop or BitchX.

Unacceptable activities include posting private information about a person without his or her consent, defaming a person or business, and knowingly making available code that will have a deleterious effect on third-party computers. Where there are allegations that your on-line activity has violated the legal rights of a third party, we will not substitute itself for a court of law in deciding tort claims raised by the third party.

4.3. Email Use. Unacceptable affronts to netiquette and unacceptable activities include, but are not limited to, the following: spamming (sending unsolicited advertising to those with which you have no existing business relationship and posting off-topic advertising in newsgroups); spoofing (using a return email address that is not the valid reply address of the sender or sending an email message that does not contain enough information to enable the recipient to identify you); passive spamming (promoting a website hosted by us by spamming from some other source); trolling (posting controversial messages in newsgroups to generate responses); mailbombing (inundating a user with email without any serious intent to correspond or sending large or multiple files to a user); generating a higher volume of outgoing mail than a normal user (over 10% of available system resources); propagating chain letters; and subscribing someone else to an electronic mailing list without that person's permission. A message is considered unsolicited if it is posted in violation of a newsgroup charter or sent to a recipient who has not requested the message. Making an email address available to the public does not constitute a request to receive messages. Distribution of mass emailing programs is also prohibited. Mailing lists may not be used to distribute unsolicited email. If you are repeatedly mailbombed or attract such behavior, the Services will be terminated.

You may not alter the headers of email messages to disguise their identity or to prevent users from responding to the messages. We may disclose the usernames of accounts responsible for forged email messages to system administrators or users requesting the information.

Violations of our policies outlined herein can sometimes result in massive numbers of email responses. If you receive so much email that our resources are affected, our staff may shut down your mailbox.

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4.4. System Security. You are prohibited from utilizing the Services to compromise the security of system resources or accounts on our servers or at any other site. Use or distribution of tools designed for compromising security or containing viruses or trojans are prohibited. Examples of these tools include, but are not limited to, password guessing programs, cracking tools or network probing tools.

If you are involved in violations of system security, we reserve the right to release all usernames of users involved in such violations to system administrators at other sites in order to assist them in resolving security incidents. We will also fully cooperate with law enforcement authorities in investigating suspected lawbreakers.

4.5. System Resources. System abuse includes any use of our resources that disrupts the normal use of its servers or services for others. Examples of system abuse include running excessive numbers of processes or consuming excessive amounts of CPU time, memory or disk space. Any usage of 10% or more of our system resources is an undue burden on our system and is unacceptable. If your usage ever exceeds 10% of system resources, your account may be terminated immediately and without prior notice.

Further, running programs in the background on one of our servers without our prior written authorization, or running chat rooms, Internet Relay Chat, IRC bots, more than 1,000 emails a day and the like are not acceptable uses of our servers.

5. Right to Terminate Agreement

(a) We reserve the right to suspend or terminate the Services to you and remove or prevent access to any material from your website at any time, without prior notice or liability, for any conduct that we, in our sole discretion, believes violates this Agreement or is otherwise harmful to our interests or the interests of other accountholders. (b) We also reserve the right to comply with the take-down provisions of the DMCA and to seek injunctive, declaratory, interpleader or other judicial or equitable relief (and, pending such action, to suspend all access to your website) if any third-party claim is made that your website content or use violates any of the acceptable uses or your obligations or representations described in this Agreement.

6. Miscellaneous

You may not assign your rights and obligations under this Agreement without the prior written consent from us, which may be withheld at our discretion. Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. Our failure to require your performance of any provision hereof shall not affect the right to require such performance thereafter; nor shall the waiver by us of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Any action for any claim arising under, or in connection with, this Agreement must be commenced by you within one year after the alleged cause of action has accrued or after the date of termination of this Agreement, whichever is earlier. In the event that any provision of this Agreement is deemed unenforceable or invalid, such unenforceability or invalidity shall not affect the remainder of this Agreement. Such provision may be amended or replaced with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of the parties as reflected in the original provision. No provision of this Agreement may be amended or modified by you except by means of a written document signed or expressly assented to by us. All terms and conditions of this Agreement that should by their nature survive termination of this Agreement shall so survive. This Agreement and the order form, together with all amendments or modifications to any of them, constitute the complete and exclusive agreement between you and us and supersede and govern. all prior proposals, agreements, or other communications

We have a responsibility to ensure that each of our clients is provided with the best services we have available. While we back up files, we are in no way responsible for the archiving of a site. It is the sole responsibility of the site creator to copy, back-up or archive all files that constitute a web site. The following guidelines also apply:

Content:

All services provided by us may be used for lawful purposes only. Transmission, storage, or presentation of any information, data, or material in violation of any United States Federal, State, or City law is prohibited. This includes, but is not limited to

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copyrighted material, material we judge to be threatening or obscene or material protected by trade secret and other statute. The subscriber agrees to indemnify and hold us harmless from any claims resulting from the use of the service, which damages the subscriber or any other party.

Pornography and sex-related merchandising is prohibited on all our servers. This includes sites that may infer sexual content or links to adult content elsewhere. We will be the sole arbiter in determining violations of this provision.

Also prohibited are sites that promote any illegal activity or present content that may be damaging to our servers or any other server on the Internet. Links to such materials are also prohibited. Examples of unacceptable content or links include Pirated software, Hacker programs or archives and Warez sites. We will be the sole arbiter as to what constitutes a violation of this provision.

- Sites offering download files. (This is any site where 20% or more of their monthly traffic is from file downloads)
- Sites using more than 20% of system resources.

We will be the sole arbiter as to what constitutes a violation of this provision

Commercial Advertising - Email:

Spamming, or the sending of unsolicited email, from our server or using an email address or domain that is maintained on our machine as reference is STRICTLY prohibited. We will be the sole arbiter as to what constitutes a violation of this provision.

Chat Rooms

We do not allow clients to install their own chat rooms. These tend to be a large drain on system resources and we cannot allow it as an account option

Background Running Programs

We may allow programs to run continually in the background. These are considered on a case-by-case basis and an extra charge will be incurred based on system resources used and operational maintenance needed.

IRC

We currently do not allow IRC or IRC bots to be operated on our servers.

Domain Pointing

Domain pointers are to be used for the purpose of having more than one way to find the same site, not for the purposes of sharing an account among multiple sites. A domain pointer may not be set up to reference a subdirectory within an existing Web hosting account served by us or any other provider.

Server Abuse:

Any attempt to undermine or cause harm to a server, or customer of ours is strictly prohibited, and will result in immediate termination or prosecution.

By ordering service from us, you agree to be bound by and to comply with this Agreement just as if you had signed it - the legal equivalent of your signature on a written contract.

Refusal of Service:

We reserve the right to refuse, cancel, or suspend service at our sole discretion.

Failure to follow any term or condition will be grounds for immediate account deactivation without refund.

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