

Terms of Service

matt - 2019-08-11 - 0 Comments - in General

Last Modified: Jan 27th, 2019

Please read this Terms of Service Agreement carefully, as it contains important information regarding your legal rights and remedies.

This Terms of Service Agreement (“Agreement”) is entered into by and between Matthew King, AKA ColumbusGEEK, d/b/a FunnelCloudHosting(“Host”) and you (“Client”). This Agreement is made effective as of the date of your use of this website (“Site”) or the date of electronic acceptance. Host and Client are sometimes referred to herein collectively as the “parties” or individually as a “party.”

1. Services.

1.1 Hosting Services

Host agrees to provide Client with services for website hosting (the “Website”) as set forth or described in Schedule A hereto (the “Hosting Services”). Host shall provide the Hosting Services so that the Website is accessible to third parties. Except as expressly provided herein, Client agrees that Host is responsible only for providing the Hosting Services, and Host is not responsible for providing any services or performing any tasks not specifically set forth in Schedule A. At the time of execution of this Agreement, to the extent that Client wishes to receive from Host, and Host wishes to provide to Client, services other than the Hosting Services (collectively, the “Additional Services”), such Additional Services and the arrangements for their provision shall be set forth in a separate addendum to this Agreement which is duly executed by the Parties (the “Services Addendum”), and the Services Addendum shall be incorporated into, and become a part of this Agreement. The Hosting Services and the Additional Services will hereinafter be referred to collectively as the “Services”.

1.2 Content

Client shall post all materials comprising the Website, including, but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text (the “Client Content”), which shall be in a correct format (as specified by Host in consultation with Client). Client acknowledges that Website construction and management is Client’s responsibility. Host shall not be responsible for Website management or files lost or damaged by Client. Host recommends that Client maintain backups of content outside of space associated with the Hosting Services as an additional layer of protection.

1.3 Availability of Website

Unless otherwise indicated on Schedule A hereto, the Website shall be accessible to third

parties via the Internet twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of Hosting Services due to causes beyond the control of Host or which are not reasonably foreseeable by Host, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures. In the event of any loss or interruption of Hosting Services, Client's sole and exclusive remedy and Host's sole and exclusive liability for any loss or interruption of Hosting Services shall be as follows: for loss or interruption of Hosting Services which is due to (i) causes other than scheduled maintenance and required repairs; (ii) causes beyond the control of Host; or (iii) causes which are not reasonably foreseeable by Host, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures, which loss or interruption of Hosting Services exceeds a continual period of twenty-four (24) hours, Client shall receive a credit against future Hosting Services equal to a pro rata portion of Hosting Services fees for the period of downtime.

1.4 Additional Storage and Transfer

Client agrees that it will not exceed the bandwidth or storage space limits applicable to the purchased Hosting Services. In the event that the Website exceeds the limits included in the Hosting Services, or should Client request or require increased limits, Host will automatically bill Client for any such upgrade in the level of Hosting Services, or the additional incremental storage required by Client's use to be included in the Hosting Services, on a time and materials basis and in accordance with the fee schedule set forth in the plan that includes the appropriate storage amounts.

1.5 Updates

WordPress core updates will be automatically implemented by Host unless requested otherwise by the Client via a support ticket. Updates are done to ensure the security of all Clients. Updates to the Websites WordPress plugins shall be the sole responsibility of the Client. Host shall provide the necessary SFTP access to allow Client to make the updates. Updates can also be made within the Clients WordPress dashboard.

2. License and Proprietary Rights.

2.1 Proprietary Rights of Client

As between Client and Host, Client Content shall remain the sole and exclusive property of Client, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights. Except as provided in this Section 2.1, nothing in this Agreement shall be construed to grant Host any ownership right in, or license to, the Client Content provided by Client to Host.

2.2 Proprietary Rights of Host

All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Host or its suppliers under this Agreement, and any know-how, methodologies, equipment, or processes used by Host to provide the Services to Client, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant

thereto (collectively "Host Materials") shall remain the sole and exclusive property of Host or its suppliers. To the extent, if any, that ownership of the Host Materials does not automatically vest in Host by virtue of this Agreement or otherwise, Client hereby transfers and assigns to Host all rights, title and interest which Client may have in and to the Host Materials. Client acknowledges and agrees that Host is in the business of hosting Websites, and that Host shall have the right to provide to third parties services which are the same or similar to the Hosting Services, and to use or otherwise exploit any Host Materials in providing such services.

2.3 Confidentiality

Each party agrees that during the course of this Agreement, information that is confidential or proprietary may be disclosed to the other party, including, but not limited to, software, technical processes and formulas, source codes, product designs, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, and marketing data ("Confidential Information"). Confidential Information shall not include information that the receiving party can demonstrate (i) is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party; (ii) was known to the receiving party as of the time of its disclosure; (iii) is independently developed by the receiving party; or (iv) is subsequently learned from a third party not under a confidentiality obligation to the providing party. Except as provided for in this Agreement, each party shall not make any disclosure of the Confidential Information to anyone other than its employees who have a need to know in connection with this Agreement. Each party shall notify its employees of their confidentiality obligations with respect to the Confidential Information and shall require its employees to comply with these obligations. The confidentiality obligations of each party and its employees shall survive the expiration or termination of this Agreement.

3. Client Content.

3.1 Client Content

Client assumes sole responsibility for (i) acquiring any authorization(s) necessary for hypertext links to third party websites; (ii) the accuracy of materials on the Website, including, without limitation, Client Content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted; and (iii) ensuring that the Client Content does not infringe or violate any right of any third party.

3.2 Acceptable Use Policy

Host does not intend to and shall have no obligation to systematically monitor the content that is submitted, stored, distributed or disseminated by Client via the Website. An Acceptable Use Policy ("AUP") is in effect for the Hosting Services. Any violation of the AUP may result in the immediate cancellation or suspension of any or all Services without warning.

3.3 Copyright

Host respects the intellectual property of others and requests that Client does too. Host

shall respond to notices of alleged copyright infringement if they comply with the law, and such notices should be reported using Host's DMCA process. We reserve the right to delete or disable content alleged to be infringing and terminate accounts of repeat infringers. Host's designated agent for notice of alleged copyright infringement on the Services is:

Copyright Agent

FunnelCloudHosting

4. Fees and Taxes.

4.1 Payment

Hosting Services shall be paid by valid payment method (acceptable to Host) at the time of purchase at the fee set forth on the Host's website. Client's monthly or annual payments for the Hosting Services, depending on the plan selected by Client, shall be automatically charged to the payment method provided by Client at the time of purchase (with such payments being charged in advance on a monthly or annual basis, as applicable) each month or annually, as applicable ("Hosting Services Fee"), and you hereby agree that Host is authorized to so charge the payment method on file. Host may, at its sole discretion, suspend or terminate Hosting Services without notice if Client fails to provide payment for the new term.

4.2 Chargeback

If Client initiates a chargeback with the provider of a credit card or initiates a similar action to a payment provider allowed by Host for charges billed by Host for Hosting Services, Hosting Services will be immediately suspended without notice. Reestablishment of service following a chargeback or similar action will require sufficient explanation for the action and payment of the disputed charge and/or Host's bank dispute fee.

4.3 Increase in Fees

Host expressly reserves the right to change the fees charged hereunder for the Hosting Services with advanced notice to the Client. If Client does not agree to any such pricing change, it may cancel the Hosting Services within thirty (30) days from the date of your notice; otherwise all such changes shall be effective with respect to Client's account and Client agrees that Host is authorized to charge the payment method provided by Client for any new Hosting Services Fee, on the next monthly or annual (as applicable) payment cycle.

4.4 Additional Services Fees

Unless otherwise agreed in writing, Client shall pay to Host all fees for Additional Services on a time and materials basis as invoiced by Host.

4.5 Breach for Failure to Pay

Failure of Client to fully pay any fees within sixty (60) days after the applicable due date shall be deemed a material breach of this Agreement, justifying suspension of the performance of the Services by Host, and will be sufficient cause for immediate termination

of this Agreement by Host. Any such suspension does not relieve Client from paying past due fees plus interest and in the event of collection enforcement, Client shall be liable for any costs associated with such collection, including, but not limited to, legal costs, attorneys' fees, court costs and collection agency fees.

4.6 Taxes

Client shall pay or reimburse Host for all sales, use, transfer, privilege, excise, and all other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the performance by Host under this Agreement; excluding, however, income taxes on profits which may be levied against Host.

5. Warranties.

5.1 Host Warranties

Host represents and warrants that: (i) Host has the power and authority to enter into and perform its obligations under this Agreement; and (ii) Host's Services under this Agreement shall be performed in a professional, workmanlike manner, consistent with industry standards.

5.2 Client Warranties

Client represents and warrants that: (i) Client has the power and authority to enter into and perform its obligations under this Agreement; (ii) Client shall use commercially reasonable efforts to prevent unauthorized access to any restricted areas of the Website and any databases or other sensitive material generated from or in connection with the Website; and (iii) Client Content does not and shall not contain any content, materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of a third party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, and that Client owns the Client Content or otherwise has the right to place the Client Content on the Website. Should Client receive notice of a claim regarding the Website, Client shall promptly provide Host with written notice of such claim.

5.3 Disclaimer of Warranty

EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 5.1, HOST MAKES NO WARRANTIES HEREUNDER, AND HOST EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6 Indemnification.

6.1 Indemnification by Client

Client agrees to indemnify, defend, and hold harmless Host, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim that: (i) if true, would constitute a breach of any of Client's representations, warranties, or agreements hereunder; (ii) arises out of the negligence or willful misconduct of Client; or (iii) any of the Client Content to be provided by

Client hereunder or other material on the Website infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets, and/or licenses.

6.2 Indemnification by Host

Host agrees to indemnify, defend, and hold harmless Client, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action arises out of the gross negligence or willful misconduct of Host.

6.3 Indemnification Process

In claiming any indemnification hereunder, the indemnified party shall promptly provide the indemnifying party with written notice of any claim which the indemnified party believes falls within the scope of the foregoing paragraphs. The indemnified party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified party shall not be final without the indemnified party's written consent, which shall not be unreasonably withheld.

7. Limitation of Liability.

7.1 Limitation of Liability

HOST SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, THE WEBSITE OR CLIENTS DATA FILES, PROGRAMS OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. HOST SHALL HAVE NO LIABILITY WITH RESPECT TO HOST'S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF HOST TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO HOST BY CLIENT UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

8. Termination and Transition.

8.1 Term

The term of service shall be determined by either Client's selection on the order form during the order process or by Client's request to Host to change to a different term. The term shall begin upon the processing of Client's order, or upon completion of requested changes by Host. Upon completion of the term, Client acknowledges and agrees that the term will renew automatically for successive terms of length equal to the prior term unless Client notifies Host of its intent to not renew the Hosting Services.

8.2 Termination

Either party may terminate this Agreement if a bankruptcy proceeding is instituted against the other party which is acquiesced in and not dismissed within thirty (30) days, or results in an adjudication of bankruptcy, or the other party materially breaches any of its representations, warranties or obligations under this Agreement, and such breach is not cured within thirty (30) days of receipt of notice specifying the breach, except that the cure period for failures of payment obligations shall be ten (10) days. Host may terminate this Agreement at any time and for any reason by providing written notice of termination to Client and refunding a pro rata portion of fees paid to Client for Hosting Services not yet rendered on the date of termination.

8.3 Termination and Payment

Upon any termination or expiration of this Agreement, Client shall pay all unpaid and outstanding fees through the effective date of termination or expiration of this Agreement.

8.4 Site Transition

Upon expiration or earlier termination of this Agreement, Host shall keep the Website publicly accessible for a period of thirty (30) days following the date of expiration or earlier termination of this Agreement and if requested by Client, Host may provide Client with transition services, at its then current rates, including Hosting Services and assistance in transitioning the Website to an alternate provider.

9. Miscellaneous.

9.1 Entire Agreement

This Agreement and attached Schedules constitute the entire agreement between Client and Host with respect to the subject matter hereof and there are no representations, understandings or agreements which are not fully expressed in this Agreement.

9.2 Cooperation

The Parties acknowledge and agree that successful completion of the Services shall require the full and mutual good faith cooperation of each of the Parties.

9.3 Independent Contractors

The parties to this Agreement are independent contractors. Neither party is an agent, representative, or partner of the other party and this Agreement shall not be interpreted or construed to create an association, agency, joint venture, partnership, franchise or employee relationship between the Parties.

9.4 Amendments

No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by the party against which such amendment, change, waiver, or discharge is sought to be enforced.

9.5 Client Identification

Upon written permission from Client, Host may use the name of and identify Client as a client in advertising, publicity, or similar materials distributed or displayed to prospective

clients.

9.6 Force Majeure

Except for the payment of fees by Client, if the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

9.7 Governing Law

This Agreement shall be governed in all respects by the laws of the State of Ohio without regard to its conflict of laws provisions, and Client and Host agree that the sole venue and jurisdiction for disputes arising from this Agreement shall be the appropriate state or federal court located in Columbus Ohio, and Client and Host hereby submit to the jurisdiction of such courts.

9.8 Assignment

Client shall not assign, without the prior written consent of Host, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement.

9.9 Notice

Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (i) if by hand delivery, upon receipt thereof; (ii) if by e-mail, upon confirmation thereof; or (iii) if by next day delivery service, upon such delivery. All notices to Host shall be addressed as follows:

email:support@FunnelCloudHosting.com

All notices to client shall be addressed to the address on file with Host, which shall be updated, as needed, by Client.

9.10 Waiver

The waiver of failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.

9.11 Severability

If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

9.12 Counterparts

This Agreement may be executed in several counterparts, all of which taken together shall constitute the entire agreement between the parties hereto.

9.13 Headings

The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

9.14 Approvals and Similar Actions

Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.

9.15 Survival

All provisions of this Agreement relating to Client warranties, confidentiality, non-disclosure, proprietary rights, limitation of liability, Client indemnification obligations and payment obligations shall survive the termination or expiration of this Agreement.

9.16 Primary Contact

Client shall designate one (1) person who will act as the primary liaison for all communications regarding the Services.

9.17 Reference

Client is advised to print a copy of this Agreement for its records, as the Agreement may need be referenced from time to time.

9.18 Electronic Contracting

Host and Client desire to facilitate certain transactions pursuant to this Agreement by exchanging documents, records and signatures electronically or by utilizing electronic agents. The use of electronic facilities or agents shall be in accordance with procedures established by Host and governed by the applicable provisions of the Uniform Electronic Transactions Act as adopted in the State of Ohio.