

ClosedBox.com
Terms Of Service Agreement
02/11/2010

ClosedBox.com (we, us, our) and (you, your) agree to the following:

1.0 Definitions.

1.1 "Client" means the person who orders our services and has ownership and control rights and obligations for our.

1.2 "Client Data" means all supporting data files and data structures provided by the Client for its Web services.

1.3 "Web Service"/"Web Services" means the server space and software services provided to the Client including but not limited to the HTTP service, FTP service, SMTP service, POP service, server extensions, third-party software, CGI library scripts and if applicable any additional contracted web design, web development, ecommerce, search engine optimization or any other add-on or contracted services as pertaining to this agreement.

1.4 "Physical Server" means the serving computers, hardware and operating- system, and software necessary to operate and support our service in accordance with this Agreement.

2.0 Scope of Services. We will provide you with the following specific services:

2.1 Physical Server Hardware and Software Services. We will provide the Physical Servers and other computer and operating system software to operate and support the Web Service in a manner acceptable in the industry. Although we will make reasonable efforts to protect your Web Service on a regular basis, we are not responsible for the Client Data residing on the Web Services. You are ultimately and solely responsible for the backup of Client Data stored on your Web Services.

2.2 Physical Server Set-Up and Updating. We will configure the Web Service, and Client will load the Client Data onto the server computers so as to create a fully functional Internet presence. After the Web Services are loaded, set up with the Client Data, and is fully operational, Client will be responsible for all Web services content.

2.3 Physical Server Connection and Access. We will provide connection of the Web Services to the Internet, including all telecommunications equipment and connections for the Web Services to provide public access on a 24-hour-a-day, 7-day-a-week basis, with the exception of scheduled maintenance downtime. We will use our best efforts to provide uninterrupted Physical Server Connection and Access, except for scheduled maintenance downtime and any interruption to Physical Server Connection and Access beyond our control caused by, for example, acts of nature, third-party equipment or transmission failures, or security breaches.

2.4 Maintenance Services. We will perform maintenance services as we determine reasonably necessary to maintain the continuous operation of the Web Services. You agree to periodically scheduled maintenance downtime periods. We will provide prior notice of the maintenance downtime, except when circumstances beyond our control limit our ability to do so.

2.4.1 You agree to the acceptance of email notifications in regard to scheduled outages, virus alerts, system information enhancements and changes. You also agree that failure to subscribe, remove yourself or failure of receipt of Web Service announcements in no way can be held against us in the fulfilment of their duties in the day to day operations.

2.5 Hardware, Equipment and Software. You are responsible for and must provide all telephone, computer, hardware and software equipment and services necessary to access us. We make no representations, warranties, or assurances that your equipment will be compatible with our service.

3.0 Payment Terms. You agree to the following payment terms in consideration for the services provided:

3.1 Set-Up Fee. None.

3.2 Contract Length. None. You are not obligated to continue using this service.

3.3 Service Fee. You will pay us a monthly Service Fee for the services we provide under this Agreement according to our current Web Services price schedule, which is available on our web site or upon request (www.closedbox.com).

3.4 Cancellation. In the event you cancel your service, you will be charged in full for the entire month in which you canceled your service. In the event you have elected to prepay subsequent, additional months' Service Fees, we retain the right to charge you an administrative fee and deduct the administrative fee from the subsequent, future months' Service Fees.

3.5 Tax. These fees are exclusive of any and all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the services provided under this Agreement, except that your income taxes and any sales or similar taxes on the sale of the Client products and services to end users shall be the sole responsibility of the Client.

3.6 Client payments are due on the 1st of every month. A reminder email will be sent to the accounts primary contact. You may pay by logging in via <http://appserver.closedbox.com/> or by mail to:

Michael Bush

306 Zinser

Washington, IL 61571

3.7 All costs associated with returned checks will also be you; the client's responsibility and such charges will be added to your account balance. An administrative fee for such returned checks may be assessed and added to your account balance by us.

3.8 In the event, it is necessary to refer your account to a collection agency in the United States or in your country of origin, a collection fee will be applied to your account by such agency for their services. This fee is in addition to the amount being collected as an outstanding balance on your account, and is payable in full. Failure to pay an outstanding balance may be reported to any and all credit reporting agencies according to the laws governing such action within the United States and/or your country. Any and all fees associated with the collection of your account, including expenses incurred by us will be passed on as part of the outstanding debt owed including but not limited to costs for long distance phone calls, fax charges, court appearances, and attorney fees, and any times required of us to attempt collection as it relates to the collection of your account.

3.9 You agree to pay all fees by the due date on invoices sent by the us whether the invoice is sent by electronic mail, facsimile, or by US Postal mail. Accounts that are delinquent may be canceled for non-payment. To re-instate your account any outstanding balance must be paid in full.

4.0 Representations and Warranties. Our obligations under this Agreement are conditioned upon the following representations and warranties:

4.1 Compliance with Law. You represent and warrant that you will comply with all applicable state and federal laws in your performance of this Agreement and in the use and operation of the Web Services, including laws governing technology, software and trade secrets.

4.2 Authority to Contract. You represent and warrant that you have full authority and right to enter into this Agreement and that there are no conflicting claims relating to the rights granted by this Agreement.

4.3 Non-Infringement. You represent and warrant that your performance of this Agreement and providing the Web Services, including the software or data files, shall not infringe the intellectual property or other proprietary rights of any third party.

4.4 Our Performance. We represent and warrant that our services shall be performed in a professional and workmanlike manner, and the computer servers will be operated in accordance with our obligations as defined by this Agreement.

4.5 Disclaimer of Warranties. ***EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED ABOVE, WE MAKE NO WARRANTY RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, AND ALL SERVICES ARE PROVIDED ON AN "AS-IS", "AS-AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF NON-INFRINGEMENT.***

5.0 You expressly agree that use of our Web Services is at your own risk. Neither we, our employees, affiliates, agents, third-party information providers, merchants, licensor or the like, warranty that our service will not be interrupted or error free; nor do we make any warranty as to the results that may be obtained from the use of our service or as to the accuracy, reliability or content of any information serviced or merchandise contained in or provided through our service, unless otherwise expressly stated in this Agreement.

5.1 Under no circumstances, including negligence, will we, our officers, agents or anyone else involved in creating, producing or distributing our service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use our services. We will further not be liable for results from mistakes, omissions, interruptions, deletions of files, errors, defects, delays and operation, or transmission or failure of performance whether or not limited to acts of nature, communication failure, theft, destruction or unauthorized access to our records, programs or services. You acknowledge that this paragraph shall apply to all content on our Web Services, any physical server, computer, hardware, and software, paper files that we maintain, operate or store.

5.2 Your exclusive remedy for all damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) will not (a) exceed the actual dollar amount which you paid during the month in which the cause of action arose, or (b) include any incidental, consequential, extemporaneous or punitive damages of any kind, including without limitation, loss of data, file, profit, good will, time, savings or revenue.

6.0 Terms and Termination. The following describes the effective date, duration and methods of termination:

6.1 Effective Date. The Effective Date of this Agreement is determined to be the first date in which the Web Services was online for use, regardless of whether or not you make use of the Web Services on this or after this date.

6.2 Duration. This Agreement will commence on the Effective Date and continue on a month-to-month basis.

6.3 Termination for Convenience. Subject to Section 3.4, you may terminate this Agreement at any time for your convenience by providing us with advance written notice at least 48 hours prior to the time you wish to terminate this agreement pending any monies owed as per the contracted agreement amount.

6.4 Breaches or Default. The following constitute a breach or default of this Agreement:

- a. your failure to pay the current month's Service Fee by the last day of the current month,
- b. your violation of Section 8.0,
- c. your violation of 9.2, or
- d. your violation of Sections 4.1, 4.2 or 4.3.

6.5 Special Lien on Personal Property. We retain a special lien on all of your personal property in our possession to secure any payment amount you may owe us under this Agreement, including but not limited to, domain names, data residing on the Web Services, email or any other form of property whether in electronic or physical form.

7.0 Ownership Rights. We acknowledge that all right, title and interest in the Client Data shall be solely owned by the Client. We own or have licensed all server software. In the event that we elect, at our option, to provide custom software to you, this software will be licensed to you for use only on our Web Services on a non-exclusive, royalty-free, fully paid basis according to the terms of this Agreement.

8.0 Activities Subject to Immediate Deactivation. PLEASE REVIEW OUR ACCEPTABLE USE POLICY. We may immediately deactivate any Web Services that is used for Illegal, Abusive or Unethical Activity without warning to you. Illegal, Abusive or Unethical Activities include, but are not limited to, violations of privacy, hacking, computer virus, gambling, and any harassing or harmful materials or uses, as determined by us. You agree to indemnify and hold us harmless from any claim resulting from your publications or use of Illegal, Abusive or Unethical materials. Although we will make reasonable efforts to alert you to such activities and allow you an opportunity to cure them within a 12-hour period after discovery, we are not required to give notice before deactivating your use of our services if, in our discretion, your use is or results in Illegal, Abusive or Unethical activities. If a Web Service is disabled, the regular monthly fees may still apply.

9.0 Miscellaneous.

9.1 Public Nature of Internet. Please understand that all information submitted on the Web Service shall be considered publicly accessible. You should protect important and private information. For example, we are not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network provider that you may use.

9.2 Unsolicited Electronic Mail. You are expressly prohibited from sending unsolicited bulk mail messages ("junk mail" or "Spam"). This includes, but is not limited to, bulk mailing of commercial advertising, information announcements, and political tracts. Such material may only be sent to those who have specifically requested it. Malicious or threatening email is also prohibited. Although we will make reasonable efforts to alert you to such activities and allow you an opportunity to cure them within a 12-hour period after discovery, we reserve the right to immediately deactivate your use of our service if we discover such activity. Further, you agree to indemnify and hold us harmless from any claim resulting from your use or distribution of electronic mail services through the service provided through this Agreement.

9.2.1 You are also liable for any and all damages that may occur from the unlawful transmission of UCE/Unsolicited Electronic Mail/SPAM as pertains to laws within the State of Illinois (*815 ILCS 511/ Electronic Mail Act.*) This includes penalties of \$10.00 per UCE or \$25,000.00 in fines by the State of Illinois as well as any civil remedies allowed under the law. Additional laws may apply with those governing states and bodies and such request from those lawful authorities will be honored by us in the lawful pursuit of those claims and charges. **WE DO NOT TOLERATE UCE/SPAM** at any level.

9.2.2 If you the "client" are found to have originated any UCE/Spam or created a phishing email and or web site or violated any actionable article of this agreement, you could be charged an additional fee of no less than \$500.00.

9.3 Governing Law and Attorneys' Fees. This Agreement will be interpreted and applied in accordance with the laws of the state of Illinois, without regard to the conflicts of law provisions. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees, whether or not a suit is actually filed.

9.4 Control and Ownership of IP. We maintain and control ownership of all IP numbers and addresses that may be assigned to you, and we reserve, in our sole discretion, the right to change or remove any and all IP numbers and addresses.

9.5 Excessive Bandwidth Usage. Web Services, which use, in our discretion, unnecessary Bandwidth capacity on the Physical Server in excess of the designed Bandwidth capacity will be subject to immediate deactivation. Upgrades to your Bandwidth capacity are available.

9.6 Resale of Services and Flow-down of Obligations. You may resell space on your own Web Services but you must first obligate any such resale to the same terms of this Agreement and incorporate into that resale all of our rights, including our rights regarding content and activity.

9.7 Age. You certify that you are at least 18 years of age.

9.8 Transfer. You may not transfer or assign this Agreement without the written consent of us.

9.9 We reserve the right to refuse service at our discretion without notice and/or with or without cause with exception of race, nationality, creed, sexual orientation, religion or gender.