

Terms of Service

Where the content states: "We" includes BenSky Hosting or any party acting on BenSky Hosting's implicit instructions. "You" includes the person purchasing the services or any party acting on the customer's instructions. "Member" includes the purchaser of services or any party acting on the purchaser's instructions. "The Registrant" includes the person applying for a domain name or any party acting on the Registrant's instructions. "The Registry" refers to the relevant domain names Registry. "Server" means the computer server equipment in connection with the provision of the Services. "Web Site" means the area on the Server allocated by us to you for use by you as a site on the Internet. "TOS" includes this agreement. BenSky Hosting reserves the right to modify this policy at any time, effective immediately upon posting of the modification to this URL:

<http://www.benskyhosting.co.uk/terms.pdf>. In consideration of the mutual covenants herein, the parties agree to the following, which shall apply during the term of this agreement:

1. Domain Name Registration

1.1 We make no representation that the domain name you wish to register is capable of being registered by or for you or that it will be registered in your name. You should therefore not assume registration of your requested domain name(s) until you have been notified that it has or they have been registered. Any action taken by you before such notification is at your risk.

1.2 The registration and use of your domain name is subject to the terms and conditions of use applied by the relevant naming authority; you shall ensure that you are aware of those terms and conditions and that you comply with them. You shall have no right to bring any claim against us in respect of refusal to register a domain name. Any administration charge paid by you to us shall be non-refundable notwithstanding refusal by the naming authority to register your desired name.

1.3 We shall have no liability in respect of the use by you of any domain name; any dispute between you and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, we shall be entitled, at our discretion and without giving any reason, to withhold, suspend or cancel the domain name. We shall also be entitled to make representations to the relevant naming authority but will not be obliged to take part in any such dispute.

1.4 We shall not release any domain to another provider unless full payment for that domain has been received by us.

2. Web Site Hosting and Email

2.1 We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss or damage to any data stored on the Server.

2.2 You shall effect and maintain adequate insurance coverage in respect of any loss or damage to data stored on the Server.

2.3 You represent, undertake and warrant to us that you will use the Web Site allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that:

2.3.1 you will not use the Server in any manner which infringes any law or regulation or which infringes the rights of any third part; nor will you authorize or permit any other person to do so.

2.3.2 you will not post, link to or transmit:

(a) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable as determined by BenSky Hosting in any way.

(b) any material containing a virus or other hostile computer program.

(c) any material which constitutes, or encourages the commission of a criminal offence, or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.

2.3.3 you will not send bulk email, whether opt-in or otherwise, from our network. Nor will you promote a site hosted on our network using bulk email.

2.3.4 you will not employ programs which consume excessive system resources including, but not limited to, processor cycles and memory. We do not host IRC, IRC bots, or other server resource intensive programs.

2.3.5 If you surpass your allotted disk/bandwidth usage as set forth in your purchased plan, you agree to purchase the excess in blocks as set forth in our "plans" section. Such payment is to be immediate and non-disputable.

2.4 We reserve the right to remove any material which we deem inappropriate from your web site without notice. We do not host Warez, Underage Adult, Pornographic, or Copyrighted MP3 content.

2.5 You shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorized use of your account or breach of security, including loss, theft, or unauthorized disclosure of your password or other security information.

2.6 You shall observe the procedures which we may from time to time prescribe and shall make no use of the Server which is detrimental to our other customers.

2.7 Members utilizing free hosting shall exclude themselves from promotions offered and afforded to paying Members.

2.7.1 Members utilizing free hosting shall display a banner as supplied by BenSky Hosting.

2.8 You shall procure that all mail is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.

2.8.1 Sending unsolicited mail messages, including, without limitation, commercial advertising and informational announcements, is expressly prohibited. A Member shall not use another site's mail server to relay mail without the express permission of the site.

2.8.2 It is contrary to BenSky Hosting policy for Members to use our servers to effect or participate in any of the following activities:

To post to any Usenet or other newsgroup, forum, e-mail mailing list or other similar group or list articles which are off-topic according to the charter or other owner-published FAQ or description of the group or list.

To send mass e-mailings; whether unsolicited, opt-in, or otherwise.

To engage in any of the foregoing activities using the service of another provider, but channelling such activities through a BenSky Hosting provided server, or using a BenSky Hosting provided server as a mail drop for responses.

To falsify user information provided to BenSky Hosting or to other users of the service in connection with use of a BenSky Hosting service.

2.8.2(a) Consequences of Violation:

When BenSky Hosting becomes aware of an alleged violation of its Acceptable Use Policy, BenSky Hosting will initiate an investigation. During the investigation BenSky Hosting may restrict Member's access in order to prevent further possible unauthorized activity. Depending on the severity of the violation, BenSky Hosting may, at its sole discretion, restrict, suspend, or terminate Member's account and/or pursue other civil remedies. If such violation is a criminal offense, BenSky Hosting will notify the appropriate law enforcement department of such violation.

2.8.2(b) You shall be held liable for any and all costs incurred by BenSky Hosting as a result of your violation of these terms and conditions. This is including, but is not limited to, attorney fees and costs resulting from Postmaster responses to complaints from and the cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations. BenSky Hosting's current hourly rate for Postmaster responses to complaints and cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations is £100 per hour, with a minimum one (1) hour charge, plus £1 for each bulk-email or Usenet message sent, plus £1 per complaint received. Server maintenance fees of £85 per hour.

2.8.3 BenSky Hosting does not issue service credits for any outages incurred through service disablement resulting from Policy violations.

2.9 Any access to other networks connected to BenSky Hosting must comply with the rules appropriate for those other networks.

2.10 While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorized users or hackers and we shall be under no liability for non-receipt or misrouting of email or for any other failure of email.

2.11 You may cancel the Services at any time by logging into the Ticket Desk Support System (for verification) and requesting cancellation of services.

3. Service Availability

3.1 We shall use our reasonable endeavours to make available to you at all times the Server and the Services but we shall not, in any event, be liable for interruptions of Service or down-time of the Server.

3.2 We shall have the right to suspend the Services at any time and for any reason, generally without notice, but if such suspension lasts or is expected to last for more than 7 days you will be notified of the reason. As a reseller or sub-client, it is your responsibility to take care of backup for sites that may be yours or ones under you. We also reserve the right to disallow services/hosting to any client as we feel necessary and hold no liability. Also please note that we do not offer any sort of compensation on our network uptime guarantee.

3.3 The Services provided to you hereunder and your account with us cannot be transferred or used by anyone other than you. No more than one log-in session under any one account may be used at

any time by you. If you have multiple accounts, you are limited to one login session per system account at any time; user programs may be run only during log-in sessions. If your account is found to have been transferred to another party, or shows other activity in breach of this sub clause, we shall have the right to cancel the account and terminate the Services and/or this Agreement immediately.

4. Payment

4.1 All charges payable by you for the Services shall be in accordance with the scale of charges and rates published from time to time by us on our web site and shall be due and payable in advance of our service provision. We reserve the right to change pricing at any time although all pricing is guaranteed for the period of pre payment.

4.2 Payment is due each anniversary month, quarter or year following the date the Services were established until closure notice is given. If you choose to pay by credit or debit card you authorise BenSky Hosting to debit your account renewal fees from your card.

4.3 All payments must be in pound sterling.

4.4 If your cheque is returned by the bank as unpaid for any reason, you will be liable for a "returned cheque" charge of £30.

4.5 Without prejudice to our other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, we shall be entitled forthwith to suspend the provision of Services to you.

5. Termination

5.1 If you fail to pay any sums due to us as they fall due, we may suspend the Services and/or terminate this Agreement forthwith without notice to you.

5.2 If you break any of these terms and conditions we may suspend the Services and/or terminate this Agreement forthwith without notice to you.

5.3 If you are a company and you go into insolvent liquidation or suffer the appointment of an administrator or administrative receiver or enter into a voluntary arrangement with your creditors, we shall be entitled to suspend the Services and/or terminate this Agreement forthwith without notice to you.

5.4 No refunds will be made for Services suspended in accordance with 5.1, 5.2 and 5.3.

5.5 We reserve the right to suspend the Services and/or terminate this Agreement at any time. In the event of this you will be entitled pro rata refund based upon the remaining period of membership.

5.6 You may cancel the Services at any time by logging into the Ticket Desk Support System (for verification) and requesting cancellation of services.

5.7 During the first 30 days of Services, You are entitled to a refund of fees paid with the exclusion of domain name registration, dedicated server, data transfer fees, and excessive support requests should you decide to cancel the Services for just cause. BenSky Hosting shall be the sole arbitrator as to the validity of your claim of just cause. And will subtract the aforementioned fees from any monies due you.

5.7.1 During the first fourteen days of service you are entitled to a full, no questions asked refund excluding as set forth in sections 5.7, 5.7.2, 5.7.3, and 12.5; as well as exclusions listed in section 2 above. For the remaining time your refund will be prorated and factored at the full discretion of BenSky Hosting.

5.7.2 Partner Plans (Resellers) are eligible for above refund minus usage fees; if such use has been deemed excessive at the discretion of BenSky Hosting. Such accounts are often more resource intensive than standard shared hosting accounts and, therefore, do not qualify under our standard 30 day guarantee details.

5.7.3 You will not be entitled to a refund as per above if you have previously had an account with BenSky Hosting under any plan or service.

5.7.4 Allow 30 (thirty) days for refund payments to process. If you have not received refund within this time allotment; please contact us.

5.8 Where payment has been made by credit or debit card, any refund will only be issued to the same credit or debit card.

5.9 On termination of this Agreement or suspension of the Services we shall be entitled immediately to block your Web Site and to remove all data located on it.

6. Indemnity

6.1 You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by us in consequences of your breach or non-observance of this Agreement.

7. Limitation Of Liability

7.1 All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to sub clause.

7.2 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.

7.3 Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim.

7.4 In any event no claim shall be brought unless you have notified us of the claim within one year of it arising.

7.5 In no event shall we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

7.6 You are responsible for monitoring Bandwidth and Disk space usage of your site. This is easily done from your Control Panel. If you go over the amount indicated in your current plan; you will assessed a surcharge as set forth in our pricing structure.

8. Notices

8.1 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 ancillary application forms 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 two days following the date of posting.

9. Support

9.1 On our site you will find links to all the information to get your web site up and running. All information pertaining to your account should have been included in the Welcome Letter you received when we created your account. If you did not receive a welcome letter email, please contact our Support Team. There are several reasons an email may not reach you; first and foremost is if the domain you have contracted services for is the same domain your welcome email was sent to.

9.2 The support feature of our service at present time consists of our Support System solving server and email related problems only.

9.2.1 If you require support for your scripting, there are several online tutorials available we can help you find. You may purchase our technicians' services at the rate of £60 per hour, with one half hour minimum billed. We reserve the right to wave this fee at any time.

9.3 Support can only be addressed in English through our Support System.

9.4 All Support requests are to be processed through our Support System. Any other request for support, except as noted in Section 9.5, will be considered a breach of our TOS.

9.5 In the event of a server outage or other such emergency, you are free to contact us in any manner.

10. Law

10.1 This Agreement shall be governed by and construed in accordance with United States law and the laws governing the state of Michigan. You hereby submit to the non-exclusive jurisdiction of the U.S. courts.

11. Headings

11.1 Headings are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

12. Torturous Conduct

12.1 No one shall post defamatory, scandalous, or private information about a person without their consent, intentionally inflicting emotional distress, or violating trademarks, copyrights, or other intellectual property rights.

12.2 Any abuse towards any BenSky Hosting employee will not be tolerated. You are expected to request and respond to support and other issues in a professional manner. When emailing BenSky Hosting or utilizing the Ticket Desk Support System, refrain from using caps, exclamation points, and other forms of written yelling. Any cursing, yelling, or further intentional disruptive behaviour aimed at BenSky Hosting or it's employees shall be considered a violation of this TOS.

12.3 Any threat; whether verbally, orally, written, or delivered by second parties directed towards BenSky Hosting or any of it's employees, partners, equipment, and concerns shall be construed as a violation of this TOS.

12.4 Any conduct viewed as violating this section shall be considered a violation of this TOS. BenSky Hosting will be the sole arbitrator in regards to what is deemed a violation.

12.5 No refunds shall be given when the contents of this section necessitates removal of the account.

13. Cancellation of Services

13.1 You may cancel the Services at any time by logging into the Ticket Desk Support System (for verification) and requesting cancellation of services.

14. Entire Agreement

14.1 These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral: between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.

14.2 BenSky Hosting reserves the right to amend these TOS at any time.

14.3 It is your responsibility to check these Terms of Service on occasion for any such amendments.