

Adnate web services

Terms and Conditions

These are the terms of the agreement (the "Agreement") between Adnate Limited and you the Customer.

You indicate acceptance of these terms and conditions of service by placing an order with Adnate Limited.

DEFINITIONS

1 In this Agreement the following words and expressions in the first column shall have the meanings ascribed to them in the second column:

"Adnate"	Adnate Limited, a company registered in England and Wales and whose registered office is at 33 Broadhurst Gardens, Ruislip, Middlesex, HA4 9JQ.
"Adnate website"	the website owned and maintained by Adnate at www.adnate.com through which the Customer may order the Services.
"the Customer"	means you, being an individual, company or other body or bodies, who has placed an order for the Services.
"Customer Content"	all text, graphics, logos, photographs, images, moving images, sound, illustrations and other material and related documentation featured, displayed or used in or in relation to the Customer Website.
"Customer Software"	software used in the Customer Website which is owned by the Customer, or licensed to him by Adnate or a third party.
"Intellectual Property Rights"	patents, trademarks, design rights, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, whether registrable or not in any country.
"Host Parent"	Heart Internet Ltd, a company registered in England and Wales and whose registered office is at 5 Faraday Building, Nottingham Science and Technology Park, Nottingham NG7 2QP
"Host Software"	software owned by or licensed to the Host Parent.
"IP Address"	the Internet protocol address (which is the numeric address) for the Server.
"the Server"	the computer server equipment operated by the Host Parent in connection with the provision of the Services.
"the Services"	web hosting, domain name registration, email, and any other services or facilities ordered by the Customer online through the Adnate Website.
"a Virus"	means a computer programme that copies itself or is copied to other storage media, including without limitation magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs, and destroys, alters or corrupts data, causes damage to the user's files or creates a nuisance or annoyance to the user and includes without limitation computer programs commonly referred to as "worms" or "Trojan horses"
"Customer Website"	the Customer Software and Customer Content to be hosted on the Server.

2 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

3 The headings of the Clauses of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

WHEREAS

4 The Customer wishes to provide Adnate with the Customer Website that will be hosted on the Server and made accessible via the Internet.

5 Adnate is a reseller of web hosting services provided to Adnate by the Host Parent.

6 Adnate has agreed to host the Customers Software and Customer Content upon the following terms and conditions.

7 The Customer has registered, or will register at the commencement of this Agreement, a domain name through the Adnate Website for the purpose of hosting the Customer Website on the Server.

DUTIES

8 Adnate shall provide to the Customer the Services subject to the following terms and conditions.

9 If required by Adnate, the Customer shall deliver to Adnate the Customer Website in a format specified by Adnate.

CHARGES

10 Charges as advertised on the Adnate Website shall be invoiced and paid in full prior to the provision of any Services.

11 The Charges under Clause 10 are exclusive of Value Added Tax or other sales taxes, which if payable shall be added to the invoiced charges and paid by the Customer.

12 All invoices raised by Adnate shall be payable by credit card or by debit card using the online facilities provided by Adnate on the Adnate Website.

13 Should any payment to Adnate be paid or credited to the benefit of Adnate after the date of the invoice, Adnate shall be entitled to charge interest in respect of late payment of any sum due under this Agreement, which shall accrue from the date of the invoice until the date of payment at a rate of 5% per annum above the base rate of the UK HSBC Bank from time to time in force.

15 Adnate provides an unconditional guarantee to fully refund any charges in relation to, and limited to, web hosting (as detailed on the Adnate Website) upon notice being given by the Customer within 30 days of placing an original order for the web hosting included in the Services, provided that the Customer shall be limited to the making of one such notice under this Clause, or under any similar clause under a similar agreement with Adnate.

RENEWALS

16 All Services, or part of the Services, shall renew on their advertised renewal date unless cancelled by the Customer. No refund can be made once a renewal of the Service, or part of the Service, has been effected. Customers must notify Adnate at least 72 hours before a Service (or part thereof) is due to be renewed if the Customer wishes to cancel that Service.

IP ADDRESSES

17 The Host Parent has undertaken to Adnate to maintain control and ownership of the IP address that is assigned to the Customer as part of the Service and reserves the right in its sole discretion to change or remove any and all IP addresses.

18 The Host Parent has undertaken with Adnate that it shall use its reasonable endeavours to avoid any disruption to the Customer should it change or remove any IP address.

SOFTWARE LICENCE AND RIGHTS

19 If the Customer requires use of the Host Software in order to use the Services, Adnate as agent for the Host Parent grants to the Customer and its employees, agents and third party consultants and contractors, a royalty-free, world-wide, non-transferable, non-exclusive licence to use Host's Software in object code form only, in accordance with the terms of this Agreement. For the avoidance of doubt, this Agreement does not transfer or grant to the Customer any right, title, interest or Intellectual Property Rights in Host's Software.

20 In relation to Adnate's obligations under this Agreement in connection with the provision of the Services, the Customer grants to Adnate a royalty-free, world-wide, non-exclusive licence to use the Customer Website. For the avoidance of doubt, this Agreement does not transfer or grant to Adnate any right, title, interest or Intellectual Property Rights in the Customer Website.

21 The Customer undertakes that he will not himself or through any third party sell, lease, license or sublicense Host's Software.

22 The Host Parent may make such copies of the Customer Website as may be necessary to perform its obligations under this Agreement, including backup copies of the Content. Upon termination or expiration of this Agreement, Adnate shall destroy all such copies of the Content and other materials provided by the Customer.

SERVICE LEVELS AND DATA BACKUP

23 Adnate shall use its reasonable endeavours to make the Server and the Services available to the Customer without disruption. However, recognising that the Services are provided by means of computer and telecommunications systems, Adnate makes no warranties or representations that the Services will be uninterrupted or error-free and Adnate shall not, in any event, be liable for interruptions of the Services or any service interruption in the availability to a third party who has accessed the Customer Website.

24 The Host Parent carries out data backups for use by the Host Parent in the event of systems failure. Adnate will not provide data restoration facilities for the Customer. Whilst every effort will be made to ensure data is backed up correctly Adnate accepts no responsibility for data loss or corruption.

25 Domain names are not deemed to be successfully registered until they appear in the relevant whois database of the top level domain name registrar. In the event that a domain name is unavailable when Adnate attempts to register it Adnate will provide a full refund of the charges for that domain name.

26 The registration of domain names shall remain subject to the terms and conditions for individual domain name registrars.

DATA TRANSFER AND SERVER USAGE

27 Where the Services carry a limited amount of data transfer and that limit is exceeded, the Services will be deactivated until the Customer has upgraded to a Service that has sufficient data transfer included.

28 The Customer Website and use of the Services may not be used for hosting file distribution websites (including but not limited to music, video and software), adult content orientated websites, hosting banners, graphics or cgi scripts for other websites, storing pages, files or data as a repository for other websites or personal computers, giving away web space under a domain, sub domain or directory.

29 Customers are prohibited from using the Server as a file/backup repository. Customers shall employ good house-keeping when maintaining their Customer Website.

30 Should the Customer use more than 5% of the Server's processing power and as a result have a detrimental effect on other customers Adnate shall be entitled to discuss with the Customer alternative solutions for hosting requirements.

31 Email boxes not accessed for 100 days or more will be deleted from the Server.

ACCEPTABLE USE POLICY

32 The Customer Website and use of the Services may be used for lawful purposes only and the Customer may not submit, publish or display any content that breaches any law, statute or regulation. In particular the Customer agrees not to

- use the Services or the Customer Website in any way to send unsolicited commercial email or unsolicited and/or bulk emails (often referred to as "spam"), or any similar abuse of the Services;
- send email or any type of electronic message with the intention or result of affecting the performance of any computer facilities;
- publish, post, distribute or disseminate defamatory, obscene, indecent or other unlawful material or information, or any material or information which infringes any Intellectual Property Rights (for the avoidance of doubt this includes licensed software distributed as Warez), via the Services or on the Customer Website;
- threaten, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
- engage in illegal or unlawful activities through the Services or via the Customer Website;
- make available or upload files to the Customer Website or to the Services that the Customer knows contain a Virus or corrupt data;
- obtain or attempt to obtain access, through whatever means, to areas of Adnate's or the Host Parent's network or the Services which are identified as restricted or confidential. This includes leaving your home directory whilst using SSH access to the Server; or
- operate or attempt to operate IRC bots or other permanent server processes.

33 The Customer has full responsibility for the content of the Customer Website. For the avoidance of doubt, Adnate and the Host Parent are not obliged to monitor, and will have no liability for, the content of any communications transmitted by virtue of the Services.

34 If the Customer fails to comply with its obligations under Clause 32 Adnate shall be entitled to withdraw the Services and terminate this Agreement without notice.

ALTERATIONS AND UPDATES

35 All alterations and updates to the Customer Website shall be made by the Customer using the online account management facility, FTP access or SSH access where available. The Customer will be issued with a user name and password in order to access the account. The Customer must take all reasonable steps to maintain the confidentiality of this user name and password. If the Customer reasonably believes that this information has become known to any unauthorised person, the Customer agrees to immediately inform Adnate and the password will be changed.

WARRANTIES

36 The Customer warrants and represents to Adnate that Adnate's use of the Customer Website in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party and that the Customer has the authority to license the Customer Software and the Customer Content to Adnate as set out in Clause 20.

37 All conditions, terms, representations and warranties that are not expressly stated in this Agreement, whether oral or in writing or whether imposed by statute or operation of law or otherwise, including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded. In particular and without prejudice to that generality, Adnate shall not be liable to the Customer as a result of any Viruses introduced or passed on to the Customer.

INDEMNITY

38 The Customer agrees to indemnify and hold Adnate and its employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against Adnate arising out of any breach by the Customer of the terms of this Agreement or other liabilities arising out of or relating to the Customer Website.

LIMITATION OF LIABILITY

39 Nothing in these terms and conditions shall exclude or limit Adnate's liability for death or personal injury resulting from Adnate's negligence or that of its employees, agents or sub-contractors.

40 The entire liability of Adnate to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the charges paid for the Services under this Agreement in respect of which the breach has arisen.

41 In no event shall Adnate be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or Adnate had been made aware of the possibility of the Customer incurring such a loss.

TERM AND TERMINATION

42 This agreement shall commence on the date the Services are made available by Adnate.

43 This agreement shall remain in force until terminated by one of the following events.

43.1 Notice given by the Customer to Adnate.

43.2 Notice given by Adnate to the Customer, provided that at least one months' notice is given by Adnate.

43.3 The failure by the Customer to pay any invoices raised by Adnate for the provision of the Services. Adnate may waive this condition at its discretion.

43.4 Either party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so.

43.5 Either party commits a material breach of this Agreement which cannot be remedied under any circumstances.

43.6 Either party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect.

43.7 Adnate ceases to carry on its business or substantially the whole of its business.

43.8 Either party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

44 Upon termination Adnate shall credit the Customer pro-rata for any Services that have been invoiced but not provided by Adnate unless the termination occurs by virtue of any act or breach of the Customer, or the Customer is declared insolvent or is subject to any of the other conditions in Clause 43.8, or notice is given by the Customer under Clause 43.1.

45 Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination.

46 On termination all data held in the Customer's account will be deleted.

ASSIGNMENT

47 Adnate may assign or otherwise transfer this Agreement at any time.

48 The Customer may not assign or otherwise transfer this Agreement or any part of it without Adnate's prior written consent.

FORCE MAJEURE

49 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet Service Provider, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

SEVERANCE

50 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

NOTICES

51 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 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 2 days following the date of posting.

52 Any notice to be given by the Customer may also be given using any customer ticketing system installed on the Adnate Website for the purpose of customers raising support or other queries with Adnate, and if sent by this method shall be deemed to be served on the day the ticket is raised.

SCRIPTING

53 Adnate is not responsible for customer programming issues other than ensuring that programming languages such as PHP and Pearl are installed and functioning on the Server.

PRIVACY

54 To protect the Customer's privacy Adnate shall not distribute the Customer's details to third parties, unless required to do so by law.

ENTIRE AGREEMENT

55 This Agreement contains the entire Agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. This agreement may be amended at any time by Adnate giving one month's notice to the Customer.

GOVERNING LAW AND JURISDICTION

56 This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

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