

# HOSTING / VIRTUAL SERVER TERMS & CONDITIONS

This contract is between Carpe Diem Incorporated Limited, a company incorporated in England under company no. 3873667, 60 High Street, Newton Le Willows, Merseyside WA12 9SH and the Client for provision of the Specified Service described below.

## TERMS AND CONDITIONS OF SUPPLY/SERVICE

### 1. SERVICE OBLIGATION

- 1.1 The headings in these terms are for convenience only and shall not affect their interpretation.
- 1.2 The minimum term for all hosting, servers and virtual servers is 12 months, plus 3 months notice period must be given.
- 1.3 Carpe Diem will use all reasonable endeavours to provide a prompt and continual service, but will not be liable for any loss of data or service resulting from delays, non deliveries, missed deliveries, or service interruptions caused by events beyond the control of Carpe Diem, or by errors or omissions of the customer.
- 1.4 This agreement contains express warranties, undertakings and obligations of Carpe Diem. All other conditions, warranties, terms, undertakings and obligations of Carpe Diem, whether implied by statute, common law, custom, trade usage or otherwise and all duties of care, contractual or otherwise, and all liabilities of any of Carpe Diem staff arising there from are hereby wholly excluded.
- 1.5 The liability of Carpe Diem in contract, tort, negligence or otherwise arising out of or in connection with supply of services hereunder shall be limited in respect of any one event or a series of two or more connected events.
- 1.6 Carpe Diem excludes any warranty as to the quality or accuracy of information received through the service.
- 1.7 Carpe Diem guarantees a Service Level of 99.5% uptime for servers and/or access to servers and/or access to the Internet in any given month. This guarantee includes: 24 x 7 network monitoring, 1 hour engineer response and 4 hour fix solutions. Failure to provide a minimum of 99.5% uptime will trigger compensation pro rata at the rate of one days rental refund per hour of downtime. The ADSL service is excluded from this SLA.
- 1.8 The Customer acknowledges that, as viruses are regularly created and distributed, the anti-virus service is intended to detect only specific known viruses and Carpe Diem does not warrant that the service will detect all viruses present on the Customer's computer systems or networks at any given time. In addition, false virus detections might occur and, if in any doubt, the Customer should contact Carpe Diem to assess if a positive detection is correct.

### 2. SUSPENSION OF SERVICE

- 2.1 Carpe Diem may elect to suspend the service immediately on breach of any of the terms and conditions of this agreement, including without limitation late or non-payment of sums due.

#### ADDRESS

CARPE DIEM LIMITED  
60 HIGH STREET,  
NEWTON-LE-WILLOWS,  
MERSEYSIDE,  
WA12 9SH

#### CONTACT

**T** : 01925 299 842  
**F** : 0871 434 5371  
**E** : [INFO@CARPE-DIEM.CO.UK](mailto:INFO@CARPE-DIEM.CO.UK)  
**WWW.CARPE-DIEM.CO.UK**

- 2.2 From time to time the whole or part of the network may be closed down for routine repair or maintenance work. Carpe Diem shall give as much notice as possible in the circumstances, and shall endeavour to carry out such works during the scheduled maintenance periods as published from time to time. Loss of service due to down time for maintenance after notice has been given (minimum of 24 hours) will not form part of the guaranteed 99.5% uptime calculation.

### 3. IMPROPER USE

- 3.1 The customer acknowledges that it may only use the service for lawful purposes. The customer warrants that:
  - 3.2 It shall not knowingly use the service to receive or transmit material that is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any intellectual property right, or otherwise unlawful.
  - 3.3 The account is to be used by a single user only (unless otherwise agreed) and that it will not allow simultaneous access using the same login.
  - 3.4 The registered user of the account will keep the username and password secure and not let them become public knowledge and that the password will not be stored anywhere on a computer in plain text.
  - 3.5 If the password becomes known to any other unauthorised user the registered user will inform Carpe Diem immediately.
  - 3.6 Any breach of these obligations shall entitle Carpe Diem to immediately terminate the service to the customer.
  - 3.7 The customer hereby indemnifies and agrees to keep Carpe Diem fully and effectually indemnified from and against any and all losses, costs, actions, proceedings, claims, damages, expenses, including reasonable legal costs and expenses, or liabilities whatsoever suffered or incurred directly by Carpe Diem in consequence of the customer's breach or non-observance of these terms and conditions.
  - 3.8 The customer shall defend and pay all costs, damages, awards, fees (including any reasonable legal fees) and judgments, awarded against Carpe Diem arising from the above claims and shall provide Carpe Diem with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claim, at the customer's sole expense.
  - 3.9 Use by others: The customer acknowledges that Carpe Diem is unable to exercise control over the material sent over the service and that Carpe Diem hereby excludes liability of any kind for the reception by the customer of offensive, threatening or obscene material.

### 4. CONNECTION TO OTHER NETWORKS

- 4.1 The service may be used by the customer to link into other networks worldwide, and the customer agrees to confirm to the acceptable use policies of such networks.

### 5. RESTRICTION ON SUB-LEASING RESELLING

- 5.1 The customer in entering into this contract undertakes that it will not assign, re-sell sub-lease or in any other way transfer the Carpe Diem connection. Contravention of this restriction in any way, whether successful or not, will result in the service being terminated by Carpe Diem

### 6. ASSIGNMENT

- 6.1 Carpe Diem shall be entitled to assign this Agreement either in whole or in part. This Agreement shall be personal to the Customer who shall not be entitled to assign this Agreement in whole or part.

### 7. DATA PROTECTION

- 7.1 Carpe Diem reserves the right to put the names and other information from the registration form relating to its Customers into a computerised directory for internal use only, unless specific written instructions are received from the Customer.

## 8. SOFTWARE AGREEMENT

- 8.1 The customer's right to use the Licensed Programs and the documentation provided with the Agreement, both of which are protected by copyright laws, is limited to the terms and conditions described below:-
- 8.2 YOU MAY (a) use the enclosed Licensed Program on a single computer, (b) physically transfer the Licensed Programs from one computer to another provided that the Licensed Programs are used on only one computer at a time and that you remove any copies of the Licensed Programs from the computer from which the Licensed Programs are being transferred, (c) make copies of the Licensed Programs solely for the purposes of backup. The copyright notice must be reproduced and included on a label on any backup copy. YOU MAY NOT (a) distribute copies of the Licensed Programs or their documentation to others, (b) rent, lease or grant your rights to the Licensed Programs, (c) translate, reverse engineer, de-compile or disassemble, or otherwise alter the Licensed Programs or their documentation without the prior written consent of Carpe Diem except to the extent dictated in the instruction for use; or (d) ship or transmit (directly or indirectly) any copies of the Licensed Programs, or any technical data in the Licensed Programs or its media, or any direct product thereof, to any entity or county destination.
- 8.3 Your license remains in effect until terminated. You can terminate it at any other time by destroying the Licensed Programs together with all copies of the Licensed Programs in any form. Your license will also automatically terminate without notice if you fail to comply with any term and condition of this agreement. Upon any termination you must destroy all copies of the Licensed Programs in any form.
- 8.4 Limited Warranty: Carpe Diem warrants the media on which the Licensed Programs are provided will be free from defects in materials and workmanship under normal user for a period of thirty (30) days after purchase. Defective media may be returned, with proof of purchase, for replacement without charge during the thirty (30) day warranty period. Carpe Diem or the other software providers do not warrant that the Licensed Programs are error-free, will operate without interruption or are compatible with all equipment and software configurations. In addition, the security mechanism implemented by the software has inherent limitations and you must determine that the software sufficiently meets your needs. This warranty does not cover any Licensed Programs that have been subjected to damage or abuse or which have been altered or changed in any way. Carpe Diem is not responsible for problems caused by computer hardware, computer operation systems or the use of the Licensed Programs in conjunction with non-Carpe Diem software.
- 8.5 EXCEPT AS PROVIDED IN THIS SECTION 9, Carpe Diem MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PROGRAMS, THEIR MERCHANTABILITY OR THEIR FITNESS FOR A PARTICULAR PURPOSE.
- 8.6 Limitation of Liability: REPAIR, REPLACEMENT OR REFUND AS THE OPTION OF Carpe Diem IS THE EXCLUSIVE REMEDY IF THERE IS A DEFECT. IN NO EVENT SHALL Carpe Diem OR THE OTHER SOFTWARE PROVIDERS BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF INCOME, DATA, USE, OR INFORMATION, EVENT IF Carpe Diem OR THE OTHER SOFTWARE PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN NO EVENT SHALL THE LIABILITY OF Carpe Diem OR THE OTHER SOFTWARE PROVIDER EXCEED THE AMOUNT PAID FOR THE LICENSED PROGRAMS AT ISSUE. YOU SHALL NOT USE THE LICENSED PROGRAMS IN ANY CASE WHERE DAMAGE OR INJURY TO PERSON, PROPERTY OR BUSINESS MAY OCCUR IF ANY ERROR OCCURS. YOU EXPRESSLY ASSUME ALL RISK FOR SUCH USE.
- 8.7 Termination of access Notice of termination of service by the subscriber shall be in writing and shall take effect from the end of the month in which such notice is received. Refund of pre-paid subscriptions shall be limited to a refund of whole month paid up subscription beginning the month following notice of termination after the minimum rental period.
- 8.8 Upon termination of these Conditions for whatever reason all due or outstanding fees and expenses owed by the Client to the Company shall forthwith become due and payable. Where these costs have not been met, the Company is entitled to prevent the transfer of the Clients domain name to another ISP.

THIS LIMITED WARRANTY SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF ENGLAND AND WALES.

**READ THESE TERMS AND CONDITIONS CAREFULLY AS ACCEPTANCE OF OUR SERVICE WILL CONSTITUTE YOUR FULL AGREEMENT OF THESE TERMS.**