

DOMAIN NAMES & WEB HOSTING

Please take the time to read these terms and conditions ("the Terms") carefully before confirming your order. YOUR ATTENTION IS PARTICULARLY DRAWN TO CONDITION 3 [PAYMENT OF FEES] AND CONDITION 5 [OUR LIABILITY]. These Terms shall apply to the contractual arrangements between you and us, BrownRS of Hardengreen Business Centre, 40/15 Dalhousie Road, Eskbank, EH22 3NX, and are accepted by you by confirming your order by email ("the Order"). No contract shall be made between you and us until we have acknowledged receipt by return e-mail ("Acknowledgment") The Order and the Acknowledgment together with the terms form the agreement between you and us ("the Agreement").

1. Definitions

In these Terms:

1.1 the following words and expressions shall have the following meanings:-

"Agreed Period"

means the period from the date of acceptance of these Terms pursuant to Condition 2 and unless otherwise terminated under Condition 11, continuing thereafter for the period to be determined by reference to the Domain Package specified in the Order submitted by you;

"Annual Fee"

means the annual fees payable by you for the Hosting Services;

"Domain Package"

means the supply for the Agreed Period of the service of domain name registration, BrownRS set up, web pointing, email forwarding and holding page included in the domain package renewable on an annual basis;

"Data Protection Legislation"

means all data protection legislation applicable to Scottish law in force from time to time including but not limited to the Data Protection Act 1998 (as from time to time amended re-enacted or replaced);

"BrownRS Services"

means the service of registering and maintaining the registration of domain names as well as any ancillary administrative functions to be provided by us for an Agreed Period as more particularly described on the Site as amended and/or updated by us from time to time;

"Domain Name"

means any domain name (including any Multilingual domain name in the .com, .net and .org top-level domains ("MDN's") registered or maintained by us on your behalf and which if you require us to provide E-Mail Services cannot exceed 64 characters in length (domain name including suffix);

"Duration Period"

means the period commencing on the date of registration and expiring on the date the Agreement is terminated in accordance with clause 13;

"E-Mail Services"

means the provision of integrated domain name, Pop 3 and web mailbox services as well as any ancillary administrative functions to be provided by us on an annual basis;

"Fees"

means the fees payable by you from time to time for the Services, as specified by us at the time of the relevant Order in respect of the relevant Initial Term;

"Holding Page Services"

means the service of providing a holding page as well as any ancillary administrative functions to be provided by us;

"Hosting Services"

means the service of web-site hosting as well as any ancillary administrative functions to be provided by us as more particularly described on the Site as amended and/or updated by us from time to time;

"Initial Term" and "Renewal Term"

As defined in Condition 2;

"Intellectual Property Rights"

means any patent, copyright, registered design, trade mark, trade name, know-how or industrial or intellectual property right subsisting anywhere in the world and any applications to protect any of the above;

"Renewal Fees"

means the renewal fees payable by you from time to time for the Services;

"Processing"

means the process of approval by us of your Registration Request for BrownRS Services;

"Registration Request"

means your request for registering domain names as set out in the Order submitted by you and received by us;

"Service(s)"

means such of the BrownRS Services, Web Pointing Services, Holding Page Services and Hosting Services which are provided pursuant to the Terms;

"Submission"

means the submission by us of the Registration Request to the relevant registration body for registration;

"Suspension Period"

means the period of minimum 28 days during which a Domain Package, E-Mail Package or Hosting Package is suspended and rendered inactive. Should payment not be received prior to or during the Suspension Period, the domain name will be deleted.

"Web Pointing Services"

means the service of pointing http requests via a BrownRS entry to a nominated URL (such that the URL shown on a web browsers URL bar will be the designated URL and not the entered URL);

1.2 unless otherwise specified, references to any statute or statutory provision is to that statute or statutory provision as from time to time amended extended or re-enacted;

1.3 the headings are for guidance only and shall not affect its interpretation; and

1.4 words in the singular shall include the plural and vice versa; words in the masculine shall include the feminine and neuter and vice versa; and words referring to persons shall include bodies corporate, unincorporated associations and partnerships.

2. Duration

2.1 Subject to Condition 2.2., this Agreement for the Services will commence when we send you an Acknowledgment and will continue for the period relevant to the Domain Package, E-Mail Package or Hosting Package selected by you (in each case "Initial Term") unless earlier terminated in accordance

with these Terms. The Agreement for the Services will be terminated unless you renew the Services by paying Renewal Fees for the period relevant to Domain Package, E-Mail Package or Hosting Package ("Renewal Term").

Please note that unless you take the steps required under the Payment Method to renew the Services prior to the date of your renewal, your Services will be automatically cancelled. Prior to cancellation, the Services will be automatically suspended for a minimum period of 28 days from the renewal date ("the Suspension Period"). During this period, we will be entitled to charge you an administration fee to re-instate your Services to an active status.

2.2 You acknowledge that the BrownRS Service shall commence when we start Processing (as applicable).

2.3 Subject to clause 3.1 you will be permitted to transfer all or any domain name not included in or the subject of the Specified Service to us upon the Commencement Date in consideration for which you agree that we will be entitled to issue an invoice for the Additional Charge.

3. Payment of Fees

3.1 You shall pay the Fees for the Duration Period for the Service(s) twelve months in advance.

3.2 You shall pay the Annual Fee for the E-Mail Service(s), Hosting Services, the E-Mail Package or the Hosting Package (as the case may be) immediately upon notification from us that such Annual Fee has become due.

3.3 You shall ensure that the Renewal Fee for the Service(s) shall be paid immediately upon notification from us that such Renewal Fee has become due.

3.4 If you fail to pay when due any amount payable under these Terms, your liability shall be increased to include interest on the overdue amount from the due date until the date of actual payment (after as well as before judgment) at the rate of four per cent per annum above the base rate from time to time of Bank Of Scotland plc.

3.5 All Fees are exclusive of VAT (if applicable), which shall be paid at the rate, and in the manner prescribed by law and subject to clause 4. All Fees are non-refundable even if a Service is suspended, cancelled or transferred prior to the end of any relevant term.

3.6 You acknowledge that the Fees and Additional Charges are exclusive of any telecommunication charges. All telecommunication charges incurred by you in connection with the use of the Services or the Specified Services remain solely at all times your responsibility. We do not accept liability or responsibility for any such charges.

4. Cancellation

4.1 You are entitled to cancel the BrownRS Services without charge within 7 working days of Acknowledgment if we have not started processing with your agreement.

4.2 You shall not be entitled to cancel the BrownRS Services: (i) if we have started Processing with your agreement; or (ii) 7 or more days after Acknowledgment.

4.3 You are entitled to cancel the Hosting Service or the E-Mail Service without charge and / or with a full refund within 7 days of our receipt of the relevant fee for the relevant Service (but not otherwise)

4.4 Time shall be of the essence in this Clause 4

5. Our Liability

5.1 We warrant that we will use reasonable endeavours to provide the Services with reasonable care and skill subject to the following for which we have no liability:

5.1.1 You appreciate that the success of the Registration Request is subject to many factors outside of our control. For example:

(a) we are subject to the terms & conditions of third party registration bodies ("Third Party Body") who, under certain circumstances, may refuse to register a particular domain name.; and

(b) MDN and the underlying encoding schemes, protocols and MDN-enabling technologies that enable MDN's to function on the Internet are currently experimental and have not necessarily been approved by Internet standard-setting bodies. They are also outside our control and subject to change without notice. These changes may impair or prevent our ability to use the MDN registered by you. It may also mean we have to interrupt or deny MDN registration services to you, temporarily or permanently as a result of these changes. There is also the risk that the Internet addressing system will not recognise your MDN registration or otherwise will not enable such MDN to function as an Internet address. We may need to make modifications to an MDN registration, without prior notice to you, in order to bring an MDN into conformance with evolving technical standards.

5.1.2 The application for the registration of any Domain Name and its on-going use may be subject to important rules, restrictions and /or a Third Party Body's terms and conditions of use. An example would be a Domain Name in the .biz top-level domain ("ld"), which may only be used for bona fide business or commercial purposes and not exclusively for personal use. Other restriction criteria apply in respect of this particular ld. You are responsible for ensuring that you are aware of and are able to comply with any such criteria and also the terms and conditions of any Third Party Body governing the registration of a Domain Name generally. Details of these restrictions can be found at <http://www.nic.biz>. All relevant Third Party body terms and conditions can be found at the following web sites: - Network Solutions (.com, .net, .org domains) Nominet (.uk domains), Afiliis (.info), eNIC (.cc domain), SamoaNIC (.ws domains), TV corporation (.tv domains), Neulevel (.biz domains), AMENSBE (.be domains) Nic at (.at domains), Nic-se (.se domains), Registration Authority Italiana (.it domains), Es Nic (.es domains), SIAMEN (.nl domains), AFNIC (.fr domains) and DENIC (.de domains).

5.1.3 Any Domain Name registered by us on your behalf may subsequently be challenged and/or cancelled by persons other than us.

5.1.4 We shall endeavour to meet any dates agreed for the obtaining of the names and domains requested by you, but such date shall be an estimate only and we accept no liability for failure to meet such date or dates.

5.1.5 You appreciate that it is not possible to guarantee continuous, uninterrupted and corrupt-free use of our server, that there may be situations where our server is prevented from working effectively or at all and that this may lead to a breakdown in the Hosting Services and/or loss and/or damage of some or all of the contents of your web site pages and/or data and/or misrouting of e-mails and/or non-receipt by you or your intended recipient of any e-mails. You understand that we cannot give any warranty or accept any liability for such interruptions to the Services or for the loss of (or damage to) any of the contents of your web site pages, data or any e-mail. It is your responsibility to maintain adequate insurance in respect of any loss or damage to your web site pages, data and e-mails.

5.1.6 We shall endeavour, through the use of authorised technical support staff, to provide you with such bona fide technical assistance and to respond as soon as possible to all reasonable technical queries raised by you. Such staff shall use their reasonable endeavours to address your technical queries but only to the extent that we in our discretion consider necessary to assist you. Such advisers shall not purport to or undertake any obligation on our behalf or expose us to any liability in connection with the supply of such advice and assistance except as expressly authorised by us. You understand that we cannot accept any liability therefore for any loss [direct indirect or consequential] or damage arising out of the giving of such assistance and advice and which is not due to our negligence recklessness or wilful misconduct in the performance of our obligations under this Agreement.

5.2 We shall be entitled on reasonable grounds and at our sole discretion:

5.2.1. to refuse to process any Registration Request: an example is if a request is submitted for a Domain Name that exceeds 64 characters in length thereby making it impossible to provide E-Mail Service support. We shall use our reasonable endeavours to explain our decision and will provide a full refund of the Fees in the event of non registration; and

5.2.2. to suspend the provision of the Services, whether by reason of failure to pay the Renewal Fee by the due date or in general.;

5.3 We accept no responsibility in respect of the use of Domain Name[s] or any Service by you in any dispute between you and any other individual organisation regarding a Domain Name. This must be resolved between the parties concerned and we will take no part in any such dispute. Although we have no obligation to monitor the Services we reserve the right at our sole discretion, to suspend or cancel the Domain Name or any Service, and/or make appropriate representations to the relevant naming authority.

5.4 We are not liable and accept no responsibility for any dispute howsoever arising you may have with any third party due to your direct or indirect use of the Services.

5.5 We reserve the right at all times to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or material, in whole or in part, in our sole discretion.

6. Promotion

In the event of conflict between these Terms and the terms of any relevant promotion, which is connected with us, or the Site, the written terms of the relevant promotion shall prevail. However, subject to clause 7.4, we shall not be liable for any other warranty, representation or promise regarding the Services made in connection with such promotion SAVE AS EXPRESSLY SET OUT IN THE WRITTEN PROMOTIONAL TERMS. If you would like a copy of such written promotional terms, please ask for a copy at the point of purchase or download a copy from our Site.

7. General

7.1 EXCEPT AS EXPRESSLY SET OUT IN THESE TERMS WE DO NOT MAKE ANY OTHER WARRANTY, REPRESENTATION OR PROMISE IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY EXCLUDE ALL LIABILITY FOR ANY AND ALL IMPLIED WARRANTIES, EXCEPT THOSE NOT EXCLUDABLE BY LAW, EXPRESS TERMS AND ANY LIABILITY FOR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LIABILITY HOWSOEVER OCCASIONED.

7.2 You agree that we shall not be liable either in contract, tort, negligence, statutory duty or otherwise, for any loss or damage (including loss or damage which is reasonably foreseeable or occurs naturally in the course of things) including, without limitation, damage for loss of business, loss of sales, loss of profits, loss of reputation, or any other financial loss or damage, resulting from or in relation to:

7.2.1 any acts, omissions, failures or delays occurring on or without any negligence on our part, or occurring on or in relation to those aspects of the Services not under our direct control;

7.2.2 the consequences of any unsuccessful or failed registration or the failure of our servers; and

7.2.3 any claims by such third parties that the domain names registered (or attempted to be registered) by us on your behalf infringe the trade marks (whether registered or unregistered) or otherwise offend any rules, restriction, policy guidelines or rights of such third parties.

7.3 You also agree that (except in relation to such liability as has been expressly excluded) that we have no liability in respect of any claims unless you notify us of such claims within one year of it arising and the maximum aggregate liability of us in contract, tort, negligence, statutory duty or otherwise, arising out of or in connection with the provision of the Services which shall be limited to the Fees paid by you in respect of the Services which are the subject of such claim. This limit shall also apply in the event that any exclusion or other provision contained in this Agreement is held to be invalid for any reason and we become liable for loss or damage that could otherwise have been limited

7.4 Nothing in this Agreement shall exclude:

7.4.1 our liability for death or personal injury arising from the negligence of us or our servants or agents; or

7.4.2 any other liability which it is prohibited from exclusion by law.

8. Your Obligations

You warrant and undertake to us:

8.1 that your performance of this Agreement including the details of the Registration Request and the Domain Name and your use of the Services will not infringe any third party rights of any nature (including but not limited to Intellectual Property Rights) or be unlawful in any way and you will indemnify us against any and all actions, claims, losses, costs, damages and expenses ("Claims") incurred by us in defending such Claims;

8.2 that you will abide by the terms and conditions rules, restrictions or policy guidelines of any Third Party Body process relevant to any aspect of the Services which we may reasonably promote or draw to your attention whether for the proper provision of the Services or in discharge of our obligations under these Terms including, without limitation, the submission to any arbitration proceedings such Third Party Body might promote;

8.3 on behalf of yourself and for any other party using your access to the Hosting Services or the E-mail Services:

8.3.1 not to use such Services in such a way which,

(a) is in breach of the laws of any jurisdiction, or the international conventions, codes or regulations applicable to the internet including but not limited to infringement of Intellectual Property Rights, defamation, theft, fraud, drug-trafficking, money-laundering and terrorism;

(b) may incite violence, sadism, cruelty or racial hatred;

(c) may facilitate prostitution or paedophilia;

(d) is pornographic, obscene, indecent, abusive, offensive or menacing; and

(e) which gives the impression that the message or posting originated from our network.

8.3.2 only to use the Services for lawful purposes;

8.3.3 not to create and/or introduce into our server or by using the Services, any other party's server any virus or contaminating program or advise any other party how to do so;

8.3.4 not to invade the privacy of users of the internet in general, including sending and receiving unsolicited e-mails nor infringe any data protection legislation throughout the world;

8.3.5 to maintain confidentiality of your login names, passwords and other confidential information relating to your access to the E-mail Services or the Hosting Services;

8.3.6 not to tamper with routing and domain name services in order to "spoof" other computer networks;

8.3.7 not to falsify or delete any author attributions, legal or other proper notices; and

8.3.8 not to do or permit anything else which would damage the name and reputation of us or otherwise detrimental to us;

8.4 that you have the right, interest, title, power and authority to enter into and perform your obligations under the Terms;

8.5 that the details you supply on the Order or any other details you supply in furtherance of the Agreement shall be and remain true, accurate and correct;

8.6 you undertake not to sell to any other person (whether in money or money's worth, the giving or withholding of any business or benefit of any kind or description), either directly or indirectly, any of the Services;

8.7 to comply with any other rules, procedures or policy which we may reasonably promote for the proper provision of the Services from time to time.

9. Your Responsibility for Loss

You shall be responsible to us for all liability, claims, losses, agency and other costs, expenses, loss of profits, business interruption, and other pecuniary or consequential loss (including reasonable legal costs and expenses) suffered or incurred by us as a result of any breach of this Agreement by you or any other party using your access to the Hosting Services or the E-Mail Services, any data or content on your web site or in your e-mails or any act or omission in relation to the use or non-use of the Domain Name the Hosting Services or the E-Mail Services by you, your employees (if any), agents or any person authorised by or under the control of you.

Notwithstanding any other provision in the Terms, in the event that you default in making any payment of any sums due to us under this Agreement ("the Outstanding Sum"), you shall immediately upon demand from us pay to us all costs and expenses howsoever incurred directly or indirectly by us in attempting to recover the Outstanding Sum including without limitation all legal expenses court fees and other disbursements and all costs incurred in using legal representatives or collection agents as appointed by us.

10. Lien

In the event of a failure by you to pay you agree that:

(a) we can cease to provide or suspend any of the Services and can prevent that Domain Name and/or any other Domain Name becoming available to you; and

(b) to the extent permitted by law, all rights and interest in the registration shall be transferred to us as the paying entity for that registration to the registry and that we reserve all rights regarding such Domain Name including, without limitation, the right to make the Domain Name available to other parties for purchase. We will reinstate your Domain Name registration solely at our discretion.

11. Privacy Policy

You agree that you have read and understood the Privacy Policy located on the Site and have consented or not consented (whichever is relevant) to allow us to use your personal details in accordance with the terms of the Privacy Policy.

12. Agents and Licenses

12.1 You agree that, if you are registering a Domain Name for someone else, you represent that you have the authority to nonetheless bind that person as a principal to all of these Terms.

12.2 You agree that if you license (subject to clause 14.2) the use of the Domain Name registered to you to a third party, you nonetheless remain the Domain Name holder of record, and remain responsible for all obligations under these Terms.

13 Termination

13.1 We shall be entitled to suspend and/or terminate the Agreement and/or restrict any of the Services immediately upon written notice to you in the event of your non-payment of Fees in accordance with clause 3;

13.2 This Agreement may be terminated with immediate effect by a party (the "Non Defaulting Party") giving written notice of termination to the other party ("the Defaulting Party") on or at any time after the occurrence of an event specified in clause 13.3 below.

13.3 the events are: -

13.3.1 if the Defaulting Party is in material breach of any of its material obligations under the Terms which are incapable of remedy; or

13.3.2 if the Defaulting Party is in material breach of its material obligations under the Terms which are capable of remedy and it fails to remedy such breach within 14 days of the notice requiring it to do so; or

13.3.3 (if applicable) if the Defaulting Party makes any voluntary arrangement or composition with its creditors; if the Defaulting Party has a bankruptcy order made against it or it being a natural person dies.

13.4 For the purposes of clause 13.1 a breach will be deemed material if it is serious in the widest sense of having a serious effect on the benefits which the Non- Defaulting Party would have otherwise derived from this Agreement.

13.5 Either party shall be entitled to terminate this Agreement immediately upon written notice to the other party if either party becomes insolvent, ceases to trade (or in the reasonable opinion of the other is likely to cease to trade) or has a liquidator, receiver, administrator or administrative receiver appointed or enters into any arrangement with its creditors or is wound up otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of its obligations, or is unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986, or is made bankrupt or undergoes a similar or analogous event in any jurisdiction; and you shall not be liable for any losses incurred by us as a result of such termination.

13.6 Any termination of the Agreement, howsoever occasioned, shall not affect any accrued rights or liabilities of either party neither shall it affect the coming into force or the continuance in force of any provision of these Terms which is expressly intended to come into or to continue in force on or after such termination.

13.7 On termination of this Agreement for whatever reason we reserve the right to:

(a) suspend, cancel, transfer or modify your Domain Name.

(b) suspend or cancel the E-Mail Services; or

(c) suspend or cancel the Hosting Services and remove all of your data located on our server. We will hold such data for a period of 14 days and allow you to collect it at your expense, failing which we shall be entitled to delete all such data. We shall further be entitled to post such notice in respect of the non-availability of your web site pages as we think fit.

14 Unforeseen Events

14.1 Neither party shall be liable for any delay in performing or for failure to perform any obligations under the Terms to the extent that the failure is caused by an Unforeseen Event (as defined in clause 14.2 below). Any such delay or failure shall not constitute a breach of the Agreement, and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.

14.2 For the purposes of these Terms an "Unforeseen Event" shall mean any circumstances beyond the relevant party's reasonable control, including without limitation the following:

(a) acts of God;

(b) outbreak of hostilities, riots, civil disturbance, acts of terrorism;

(c) fire, explosion, flood, fog or bad weather;

(d) power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles (including without limitation internet routers, gateways, servers, domain names servers and other internet infrastructures); and

(e) theft, malicious damage, strike, lockout or industrial action of any kind.

14.3 Notwithstanding anything to the contrary stated in the Terms, if any Unforeseen Event shall continue for a period of 90 days or more, you shall be entitled to terminate the agreement forthwith upon written notice.

15 Notices

Any notice to be given or served under these Terms shall be in writing and shall be delivered personally or sent by facsimile or by first class post to the party to be served at the address set out in either the Order or Site (or such other address as either party may from time to time notify in writing to the other) and shall be deemed to have been served: -

(a) immediately in the case of personal delivery;

(b) in the case of facsimile on the next business day following the time of transmission subject, in the absence of a written acknowledgment, to the original notice being sent by post or by personal delivery in accordance with this clause not later than the next business day after such transmission; and

(c) in the case of postal delivery, on the second business day following the date of posting (the fifth business day if posted to another country) or on acknowledgment of receipt if sooner.

16 Miscellaneous

16.1 This Agreement constitutes the entire understanding between the parties concerning the provision of the Services, and replaces, supersedes, and cancels all previous arrangements, understandings, representations or agreements relating thereto. For the avoidance of doubt each party irrevocably waives any right it may have to seek a remedy for any misrepresentation which has not become a term of this Agreement, as well as any breach of warranty or undertaking other than those contained in this Agreement (whether express or implied, statutory or otherwise), unless such misrepresentation, warranty or undertaking was made fraudulently. This Agreement shall apply and prevail over any terms and conditions (whether conflicting or not) contained or referred to in any documentation submitted or provided by you.

16.2 You may not without our prior written approval assign, transfer, licence or deal with your Domain Name or with any of your other rights under the Agreement or sub-contract any of your obligations. We may assign or sub-contract any of our rights under the Agreement and may sub-contract any of our obligations.

16.3 All amounts due from you to us under this Agreement shall be paid in full without any set-off, destruction or withholding (including, without limitation, for or on account of any counterclaim).

16.4 Both parties shall be deemed to have the status of an independent contractor, and nothing in the Terms shall be deemed to place the parties in the relationship of employer-employee, principal-agent, partners, or joint venturers. Both parties shall be responsible for any taxes or charges on the payments received by it hereunder.

16.5 If at any time any provision of the Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect: -

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement or

(b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

16.6 No failure or delay by either party in exercising or enforcing any right, power, or remedy which arises under the Terms or from any breach of its provisions shall operate as or be deemed to be a waiver of that or any other right, power or remedy or of any subsequent exercise of such right, power, or remedy. No waiver or modification of any provision of the Terms shall be effective unless in writing and signed by the party against whom such waiver or modification is sought to be enforced.

16.7 Each provision of this Agreement excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or other of those provisions is held inapplicable or unenforceable in any circumstances and shall remain in force notwithstanding the termination of this Agreement howsoever occasioned.

16.8 The parties agree that the provisions of these Terms are personal to them and are not intended to confer any rights on any other third party. The Contracts (Rights of Third Parties) Act 1999 shall not apply to our Agreement or to any provision of the Terms.

16.9 The Agreement shall be governed and interpreted in accordance with the laws of Scotland and the parties submit to the non-exclusive jurisdiction of the Scottish courts