

## **TERMS OF SERVICE**

This Agreement is entered into on the date the order is placed, (the "Effective Date") by and between Customer listed below (hereafter referred to as "Customer") and Universal CDN. Universal CDN is a Limited Liability Company based at Delaware, USA, (hereafter referred to as "UCDN"). Customer and UCDN are sometimes referred to collectively in this Agreement as the "Parties."

PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING ON THE "ORDER NOW" BUTTON ON THE ORDER FORM REFERENCED HEREIN OR BY SIGNING OUR SERVICE ORDER or AGREEMENT, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, UCDN's PRIVACY POLICY & ACCEPTABLE USAGE POLICY. YOUR USE OF THE SERVICES ALSO CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

Customer desires to engage UCDN for the purpose of, but not limited to, providing content delivery network (CDN) and related services to Customer's site on the World Wide Web (the "Website") and providing metered bandwidth to Customer over the Internet (hereafter referred to as the "services")

To carry out these purposes, the Parties have agreed to the following:

### **Definitions**

#### **Browser.**

The term "Browser" refers to a program used to provide interactive, graphical access to sites on the World Wide Web.

#### **Internet.**

The term "Internet" refers to the global network of computers using the TCP/IP protocol for communication.

#### **Web.**

The term "Web" refers to the World Wide Web. The Web is a graphical interface used to access sites on the Internet.

#### **Website.**

The term "Website" refers to a series of interconnected Hypertext Markup Language documents capable of residing on a single CDN server or computer.

#### **Storage.**

Disk space through UCDN's website as amended on CDN's server for storage of the parts of the Website and any data files associated with the Website at various times. Additional disk space is available at a rate per GB each month as amended from time to time at UCDN's sole discretion.

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### **Bandwidth.**

Monthly bandwidth (data transfer) as stated on UCDN's website as amended from time to time at UCDN's sole discretion. Bandwidth generally expires on the billing date (for example monthly or annually) unless explicitly stated otherwise by UCDN.

### **Availability of UCDN.**

UCDN's Content Delivery Network will be available to Internet users approximately 24 hours a day, subject to planned or unplanned maintenance and network interruptions. To minimize server downtime during peak usage periods, UCDN will schedule routine maintenance during the hours of lowest on average usage of UCDN's network.

### **Log Information.**

Customer will have access to usage statistics via the Web.

### **Backups.**

Customer is solely responsible for all backups.

## **Compensation**

1. The price for all services provided by UCDN to Customer will be in US Dollars as described on UCDN's website. UCDN's pricing may be amended from time to time at UCDN's sole discretion. UCDN may provide limited technical support as part of Customer's service package and may charge Customer additional fees for such services. Unless otherwise determined by UCDN in its sole discretion, UCDN will invoice Customer for any and all UCDN products and services on a monthly basis. All invoices are due and payable upon receipt. All sales are final and unless otherwise agreed to by UCDN in writing there is no trial or cooling-off period.
  - 1.1 Customer has the option to register through UCDN's web-portal. UCDN will provide for each registered Customer limited use of UCDN's core services CDN & Cloud Space "free of charge" or limited to the amount credited by UCDN in the Customer's account (the "Credits"), for a maximum of 30 (thirty) calendar days (Trial period). It is at the discretion of UCDN to change without

- prior notice the terms of the Trial period including but not limited to its duration.
- 1.2 Customer is obliged to pay in advance for any services ordered from UCDN.
  - 1.3 All charges are non-refundable (including any pre-payments) unless expressly stated otherwise.
  - 1.4 Unused account balance is reset upon expiration and/or termination of the Trial period and/or any agreement executed between UCDN and the Customer.
  - 1.5 Customer shall be invoiced for any Service Activation Charges and services ordered. Upon receipt of payment by Customer, UCDN may create a financial document which can be accessed either via client's profile in the platform or via email provided by the Customer in the registration process.
  - 1.6 Unless specified otherwise between UCDN and the Customer, all invoices sent by UCDN to Customer are payable within fourteen (14) calendar days from the invoice date.
  - 1.7 Once a Customer uses 100% of its Credits, UCDN may in its sole discretion suspend and/or terminate any services provided to the Customer, until further payment made by the Customer in accordance with clause 1.2.
  - 1.8 Customer specifically agrees to receive and/or obtain 'Electronic Communications' ( as defined below) from UCDN. The term 'Electronic Communications' includes, but is not limited to, any and all current and future notices including payment reminders, payment invitations, as well as such other documents, statements, data, records and any other communications regarding the Customer's payment obligations to UCDN.
  - 1.9 The Customer is fully responsible for the accuracy and completeness of all data (such as change in billing or mailing address, credit card expiration) and timely notification of changes of these details. UCDN is not responsible for any errors resulting from Customer's failure to notify UCDN.
  - 1.10 Upon suspension of services to a Customer, Customer's information will be kept for a 3 months period. UCDN agrees to permanently delete the personal information of the suspended Customer from its own files at the expiration or earlier termination of this Agreement.

## **2. Term and Cancellation**

- a. The initial term of this Agreement shall be for 1 month unless otherwise specified in writing and/or set forth in the Order Form (the "Initial Term") at the time of ordering the service. The Initial Term shall begin upon receipt of payment from Customer. After the Initial Term, this Agreement shall always continue to automatically renew at the then current UCDN pricing on the date of the anniversary date of Customer's term commencement date.
- b. AT THE END OF THE INITIAL TERM, CUSTOMER ACKNOWLEDGES, AGREES AND AUTHORIZES UCDN TO AUTOMATICALLY BILL AND/OR CHARGE

CUSTOMERS CLIENTS ACCOUNT ON FILE FOR SUCCESSIVE TERMS OF EQUAL LENGTH AS THE INITIAL TERM, UNLESS TERMINATED OR CANCELED BY EITHER PARTY AS PROVIDED FOR IN THIS AGREEMENT. The Initial Term and all successive renewal periods shall be referred to, collectively, as the "Term".

- c. This Agreement may be terminated (A) by Customer giving UCDN thirty (30) days prior written notice, (B) by UCDN in the event of nonpayment by Customer, (C) by UCDN at any time, without notice, if, in UCDN's sole and absolute discretion and/or judgment, Customer is in violation of any term or condition of this Agreement and related agreements, UCDN's Acceptable Use Policy, or Customer's use of the Services disrupts or, in UCDN's sole and absolute discretion and/or judgment, could disrupt, UCDN's business operations.
- d. UCDN reserves the right to cancel service(s) at any time. All fees paid in advance of cancellation will be pro-rated and refunded by UCDN to customer if UCDN initiates its right of cancellation and customer is NOT in violation of these Terms and Conditions. If cancellation is caused by customers and/or its client's breach of the Terms of Service, Acceptable Use Policy, or Privacy Policy then customer agrees that no refund is due and any prepaid charges are considered liquidated damages to UCDN. Customer understands that service(s) may be canceled at any time effective the end of the contract.
- e. All account cancellations must be done by opening up a cancellation ticket with the UCDN billing department (billing@ucdn.com) Notifications of cancellation must be made at least 30 days prior to successive rebill period. UCDN reserves the right to deny, forfeit, or refuse refunds at any time if necessary. Third party cancellations are not accepted.

**3. Customer Warranties. Customer represents and warrants to UCDN that:**

- a. Customer owns or has the right to use all material provided to UCDN, including all text, graphics, sound, video, programming, scripts, and applets; and
- b. The use, reproduction, distribution, and transmission of the content, or any information or materials contained in it, on and from UCDN's server computer does not:
  - i. infringe or misappropriate any copyright, patent, trademark, trade secret, or any other proprietary rights of a third party;
  - ii. violate any criminal laws;
  - iii. constitute false advertising, unfair competition, defamation, an invasion of privacy, violate a right of publicity, or violate any other law or regulation.

#### **4. Limitations of Warranties and Liability.**

a. Customer agrees that its use of Services and its reliance upon information provided by UCDN are entirely at Customer's own risk. Customer acknowledges and agrees that UCDN exercises no control over, and accepts no responsibility for, the content of data, scripts, or other information passing through UCDN's host computers, network hubs and points of presence or the Internet. THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN AS IS, AS AVAILABLE BASIS. NEITHER UCDN, ITS CUSTOMERS, EMPLOYEES, AGENTS, OR AFFILIATES MAKES ANY WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, FOR THE SERVICES OR ANY EQUIPMENT PROVIDED IN CONJUNCTION THEREWITH. NEITHER UCDN NOR ITS CUSTOMERS, EMPLOYEES, AGENTS, OR AFFILIATES MAKES ANY WARRANTIES THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO ANY OF THEM MAKE ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICES OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THE SERVICES. UCDN IS NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM CUSTOMER OR STORED BY CUSTOMER OR ANY OF CUSTOMER'S CUSTOMERS VIA THE SERVICES PROVIDED BY UCDN. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY ANY UCDN EMPLOYEE, CUSTOMER, OR AGENT WILL CREATE A WARRANTY; NOR MAY CUSTOMER OR ANY OF CUSTOMER'S CUSTOMERS, EMPLOYEES, OR AGENTS RELY ON ANY SUCH INFORMATION OR ADVICE. The parties hereby agree that the terms of this section shall survive any termination of this Agreement.

#### **5. Indemnification.**

a. Customer agrees to indemnify, defend and hold harmless UCDN and its parent, subsidiary and affiliated companies, and each of their respective members, officers, directors, employees, shareholders and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to Customer's use of the Services, any violation by Customer of this agreement, any breach of any representation, warranty or covenant of Customer contained in this Agreement or any acts or omissions of Customer. The terms of this section shall survive any termination of this Agreement.

## **6. Limitation of Liability.**

- a. Customer agrees neither UCDN nor any of its employees, Customers, or agents shall be held responsible or liable for situations where the Services are accessed by third parties through illegal or otherwise unauthorized means, including situations where such data is accessed through the exploitation of security gaps, weaknesses or flaws (whether known or unknown to UCDN at the time) which may exist in the Services or UCDN's equipment used to provide the Services.
- b. Under no circumstances, including negligence, shall UCDN or any of its employees, Customers, or agents be liable for any indirect, incidental, special, consequential or punitive damages, or loss of profits, revenue, data or use by Customer, any of its Customers, any Reseller Customer or any other third party, whether in an action in contract or tort or strict liability or other legal theory, even if UCDN has been advised of the possibility of such damages. No UCDN Person shall be liable to Customer, any of its Customers, any Reseller Customer or any other third party, for any loss or damages that result or are alleged to have resulted from the use of or inability to use the Services, or that results from mistakes, omissions, interruptions, deletion of files, loss of data, errors, viruses, defects, delays in operations, or transmission or any failure of performance, whether or not limited to acts of God, communications failure, theft, destruction or unauthorized access to UCDN's records, programs, equipment or services.
- c. Notwithstanding anything to the contrary in this Agreement, UCDN's maximum liability under this Agreement for all damages, losses, costs and causes of actions from any and all claims regardless of the legal theory or the nature of the cause of action shall not exceed the actual dollar amount paid by Customer for the Services which gave rise to such damages, losses and causes of actions during the twelve (12) month period prior to the date the cause of action arose or the injury or loss occurred.
- d. Customer understands, acknowledges and agrees that if UCDN takes any corrective action under this Agreement because of an action of Customer or one its Customers that corrective action may adversely affect other Customers of Customer or other Reseller Customers, and Customer agrees that UCDN shall have no liability to Customer, any of its Customers or any Reseller Customer due to such corrective action by UCDN.
- e. This limitation of liability reflects an informed and voluntary allocation of risks between the parties and applies to risks both known and unknown that may exist in connection with this Agreement. The terms of this section shall survive any termination of this Agreement.

## **7. Prohibited Uses and Activities.**

a. UCDN may immediately take corrective action, including removal of all or a portion of the Customer's content, disconnection or discontinuance of any Services if Customer, or anyone accessing Customer's account or server space, engages in any of the prohibited Uses or Activities set forth in Section 16 of this agreement. Customer hereby agrees that UCDN shall have no liability to Customer or any of Customer's Customers due to any corrective action that UCDN may take (including, without limitation, disconnection of Services).

### **8. Violations of Intellectual Property Rights.**

a. Customer agrees that it shall not violate any intellectual property rights and that it shall not resell services to any party that violates intellectual property rights. Any violation of any individual or entity's intellectual property rights including, rights of privacy and rights of publicity are prohibited and may result in a suspension or termination of your account with UCDN. UCDN is required by law to remove or block access to content appearing on or through the Services upon receipt of proper notice of copyright infringement (see section 18).

### **9. Spamming.**

a. Customer agrees not to send spam or resell its services to anyone who sends spam. The term "spam" includes, but is not limited to, the sending of unsolicited bulk and/or commercial e-mail messages over the Internet or maintaining an open SMTP policy. In the event of a dispute, UCDN reserves the right to determine, in its sole and discretion, whether e-mail recipients were from an opt-in email list.

### **10. Misrepresentation of Transmission Information.**

Customer agrees not to forge, misrepresent, omit, or delete message headers, return mailing information and/or Internet protocol addresses to conceal or misidentify the origin of any message or to resell services to anyone who engages in said conduct.

### **11. Viruses and Other Destructive Activities.**

Use of the Services for creating or sending malicious, destructive or nuisance code, examples of which include but are not limited to, viruses, worms and Trojan horses, or for pinging, flooding or mail-bombing, or engaging in denial of service attacks is prohibited and is a breach of this agreement. Customer also agrees not to engage in any other activity that is intended to disrupt or interfere with, or that results in the disruption of or interference with, the ability of others to effectively use the Services (or any connected network, system, service or equipment).

### **12. Malicious or Unauthorized Hacking.**

Customer agrees not to conduct or promote any "Hacking" activity and agrees that "Hacking" as herein defined includes but is not limited to, the following activities: illegally or without authorization, accessing computers, accounts or networks, penetrating or attempting to penetrate security measures, port scans, stealth scans, and other activities designed to assist in malicious or

unauthorized hacking or cracking. Any such activity on the part of Customer is a material breach of this Agreement.

### **13. Export Control Violations.**

The exportation of encryption software outside of the United States and/or violations of United States law relating to the exportation of software is prohibited.

### **14. Child Pornography.**

The use of the Services to store, post, display, transmit, advertise or otherwise make available child pornography is prohibited. UCDN will as required by law, notify law enforcement agencies when it becomes aware of the presence of child pornography on, or being transmitted through, the Services.

### **15. Other Illegal Activities.**

The use of the Services to engage in any activities that are determined by UCDN, in its sole and absolute discretion, to be illegal or which in UCDN's opinion are likely to be found to be illegal is prohibited. Such illegal or potentially illegal activities include, but are not limited to, storing, posting, displaying, transmitting or otherwise making available ponzi or pyramid schemes, password and cracking information, fraudulently charging credit cards or displaying credit card information or other private information of third parties without their consent, and failure to comply with applicable on-line privacy laws. UCDN will cooperate fully with appropriate law enforcement agencies in connection with any and all illegal activities occurring on or through the Services.

### **16. Obscene, Defamatory, Abusive or Threatening Language.**

Use of the Services to store, post, transmit, display or otherwise make available obscene, defamatory, harassing, abusive or threatening language is prohibited.

### **17. Other Prohibited Activities.**

Engaging in any activity that, in UCDN's sole and absolute discretion, disrupts, interferes with or is harmful to (or threatens to disrupt, interfere with, or be harmful to) the Services, UCDN's business, operations, reputation, goodwill, Customers and/or Customer relations, or the ability of UCDN's Customers to effectively use the Services is prohibited. Such prohibited activities include making available any program, product or service that is designed to or could be used to violate this Agreement. In addition, the failure by a Customer to cooperate with UCDN in correcting or preventing violations of this Agreement by, or that result from the activity of, a Customer of the Subscriber is a violation of this Agreement.

### **18. Copyright Notice Infringement Information.**



Pursuant to the Digital Millennium Copyright Act, UCDN has adopted a policy that provides for termination of websites hosted by UCDN that are found to infringe on copyrights of third parties. Customer expressly acknowledges that they are aware of this provision and Customer waives any claims it may have, should it be injured by the enforcement of this provision. If a copyright holder believes that there has been a violation of their copyright on a website that is hosted by UCDN and the copyright holder demands that UCDN remove the website or disable the material in question, UCDN will, if all requirements are satisfied, remove the website or disable the material, if the copyright holder provides UCDN with all of the following information:

A signature of a person authorized to act on behalf of the Customer of the exclusive right that is allegedly infringed.

Identification of the copyrighted work that is claimed to have been or being infringed, or, in the case of claimed infringement of multiple copyrighted works, a representative list of such works.

Identification of the material that is claimed to be infringing or is the subject of infringing activity and that should be removed or access to which should be disabled, with information reasonably sufficient to permit us to locate the material. Information reasonably sufficient to permit us to contact the person giving the notification, such as an address and telephone, and, if available, an electronic mail address at which such person may be contacted.

A statement that the person giving the notification has a good faith

belief that use of the material in the manner complained of is not authorized by the copyright Customer, its agent, or the law. A statement that the information in the notification is accurate, and under penalty of perjury, that the person giving the notification is authorized to act on behalf of the Customer of the exclusive right that is allegedly infringed.

#### **19. Right to Monitor and Remove Unacceptable Content.**

UCDN has the right, but not the duty, to review and monitor all content submitted for or included on the CDN, and in its sole discretion to remove any content that UCDN finds objectionable for any reason, without prior notice to Customer.

#### **20. Assignment.**

This Agreement may not be assigned by Customer, but may be assigned by UCDN without notice or any permission from the Customer.

#### **21. Modifications.**

This Agreement may be amended at any time and from time to time at UCDN's sole and absolute discretion by posting changes to the UCDN website and Customer hereby agrees to review the UCDN website for changes that shall become part of this Agreement.

#### **22. Force Majeure.**

UCDN will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party. However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

### **23. Joint Drafting And Neutral Construction.**

This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.

### **24. Severability Of Agreement.**

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

### **25. Entire Agreement.**

This Agreement, including all Exhibits, Appendices, and Attachments, contains the entire agreement of the Parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Party to be charged.

### **26. Venue And Applicable Law.**

Any and all matters in dispute between the parties to this agreement, whether arising from or relating to the agreement itself, or arising from alleged extra-contractual facts prior to, during, or subsequent to the agreement, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or violation of the contract, shall be governed by, construed, and enforced in accordance with the laws of the state of Delaware USA regardless of the legal theory upon which such matter is asserted.

### **27. Attorney Fees And Costs.**

In any action brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorney's fees and all other litigation costs, including expert witness fees, and all actual attorney's fees and litigation costs incurred in connection with the enforcement of a judgment arising from that action or proceeding. The provisions of the preceding sentence shall be severable from the provisions of this Agreement and shall survive the entry of any such judgment. The Parties submit to jurisdiction and venue in the State of Delaware USA in any legal proceeding arising regarding this Agreement.

**28. Remedies.**

The remedies available by law to UCDN are not limited in any way by this provision. However, in the event that Customer violates any of the above provisions of this Agreement, UCDN may at their discretion terminate Customer's account and Customer agrees to waive any right to a refund of any amount paid as well as complete payment of any outstanding amount due to UCDN.