

**Terms & Conditions  
Network Distribution (Jersey) Limited trading as Webreality  
November 2017**

**1. SERVICE AGREEMENT**

**1.1 SCOPE**

This Service Agreement ("Agreement") applies to the purchase from Webreality and its affiliates (collectively, "NETWORK DISTRIBUTION (JERSEY) LIMITED", hereinafter referred to as "ND(J)L") of all services (collectively, the "Services") selected by Customer. Hereinafter, uses of "you" and "your" refer to Customer and "we", "us", "our" refer to NETWORK DISTRIBUTION (JERSEY) LIMITED. The Services may include but are not limited to online strategy consultancy services, web site hosting services, web site production services, and custom web development services (collectively, the "Web Services") and email marketing services, pay-per-click advertising services and search engine optimisation services (collectively, the "Marketing Services") and domain registration and renewal services (collectively, the "Domain Services").

**1.2 TERM - WEB SERVICES**

Unless otherwise agreed in writing between Customer and ND(J)L, this Agreement shall be for an Initial Term of twelve months. This Agreement will be automatically renewed, at the end of the Initial Term, on a month-to-month basis unless either party provides thirty (30) days written notice to the other of termination of this Agreement prior to the end of the then current term. The Initial Term and all month-to-month extensions thereof are collectively referred to herein as the Term of this Agreement.

**1.3 TERM - MARKETING SERVICES**

Unless otherwise agreed in writing between Customer and ND(J)L, this Agreement shall be for an Initial Term of three months. This Agreement will be automatically renewed, at the end of the Initial Term, on a month-to-month basis unless either party provides thirty (30) days written notice to the other of termination of this Agreement prior to the end of the then current term. The Initial Term and all month-to-month extensions thereof are collectively referred to herein as the Term of this Agreement.

**1.4 BILLING AND PAYMENT**

**Pricing:** During the term of this Agreement, Customer shall pay the fees for the Services that are set forth on the Purchase Order Form. Such fees may include taxes, fees or assessments by governmental agencies and ND(J)L shall have the right, at any time, to pass through and invoice to Customer any new or increased taxes, fees, assessments or other charges imposed on or required to be collected by ND(J)L by any governmental agency.

**Terms Of Payment:** Invoices are due and payable upon receipt. All payments shall be made in British Pounds, in advance of the provision of Services or as otherwise agreed between ND(J)L and Customer. Monthly fee payments shall be made by standing order unless expressly otherwise agreed in writing between ND(J)L and Customer.

**Service Continuation After Initial Term:** The fees set forth in the Purchase Order Form are guaranteed during the Initial Term of this Agreement. If Customer continues to receive the Services after the Initial Term without entering into a new agreement or agreement extension, the fees charged after the Initial Term shall be at the then standard ND(J)L rates for such services, without discount, determined month to month.

**Service Charge:** Customer will be liable to pay a late payment charge equal to 1.5% (or the highest amount permitted by law, whichever is lower) per month or portion thereof on the outstanding balance of any invoice remaining unpaid thirty (30) days after the date upon which payment is due.

**Suspension Or Interruption Of Service For Non-Payment:** In the event Customer's account becomes past due, or is otherwise deemed insecure, ND(J)L may, in its sole discretion, suspend, interrupt or disconnect the Services. In the event of such suspension, interruption or disconnection, Customer may be required to post a deposit or such other security, as ND(J)L deems necessary in order to resume receiving the Services. In addition, if ND(J)L in its sole

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discretion, deems Customer to be financially insecure, ND(J)L may require such other action of Customer, including letters of credit, security deposit(s), restrictions on available credit or other action as ND(J)L may require from time to time regardless of Customer's then-current status or payment history. Failure to satisfy ND(J)L's request for such action within timelines set by ND(J)L may result in immediate termination of service without further notice.

**1.5 PRE-PAID BANK OF HOURS**

Pre-paid Bank of Hours services are provided at standard hourly rates and must be pre-paid in blocks of no less than 10 hours at a time. Customer will receive a monthly statement detailing activity for the period and the month-end balance of hours. Pre-paid Bank of Hours services terminate when all the hours of the Bank of Hours have been used. A notice will be sent to Customer when seventy-five percent (75%) of the purchased hours have been consumed, providing sufficient time for Customer to purchase additional hours as may be required without any interruption of service. Unused hours expire 12 months after date of purchase (taken from date of Purchase Order Form signed by Customer).

**1.6 ACCEPTABLE USES**

Customer shall at all times adhere to the ND(J)L Acceptable Use Policy contained herein, as amended from time to time by ND(J)L effective upon posting of the revised policy. Notwithstanding anything to the contrary contained herein, ND(J)L may immediately take corrective action, including disconnection or discontinuance of any and all Services, or terminate this Agreement in the event of notice of possible violation by Customer of the ND(J)L Acceptable Use Policy. In the event ND(J)L takes corrective action due to a violation of the ND(J)L Acceptable Use Policy, ND(J)L shall not refund to Customer any fees paid in advance of such corrective action.

**1.7 CANCELLATION POLICY**

The minimum contract term (Initial Term) is twelve months unless otherwise agreed in writing between ND(J)L and Customer, after which time either party may terminate this Agreement by giving the other at least thirty (30) days prior written notice. In order to terminate before the end of the Initial Term, Customer's authorized person shall notify ND(J)L of such request to do so. ND(J)L, in its sole discretion, will assess whether any amounts still due in the Initial Term shall be cancelled. ND(J)L shall not be liable for unauthorized termination of an Initial Term. Any termination by ND(J)L or Customer during or after the Initial Term shall not relieve Customer of any obligations to pay fees incurred and accrued prior to such termination. Where a standing order is in force in payment for a service which is cancelled by either party in accordance with the terms of this paragraph, it will be Customer's responsibility to cancel the applicable standing order. In the event that Customer fails to cancel any such standing order in good time to prevent an overpayment to ND(J)L, ND(J)L reserves the right, at its sole discretion, to make an administration charge of 10% of the value of any such overpayment when processing any resultant refund.

**1.8 IP ADDRESS OWNERSHIP**

ND(J)L shall maintain and control ownership of all IP numbers and addresses that may be assigned to Customer by ND(J)L and ND(J)L reserves, in its sole discretion, the right to change or remove any and all such IP numbers and addresses.

**1.9 EVOLVING INFRASTRUCTURE**

ND(J)L reserves the right to modify its network and facilities used to provide the Services for purposes including but not limited to accommodating evolving technology and increased network demand, and providing enhanced services. ND(J)L shall use reasonable efforts to notify Customer of any planned changes to ND(J)L's network or facilities that may adversely affect the Services provided hereunder.

**1.10 CACHING**

Customer expressly (i) grants to ND(J)L a license to cache the entirety of Customer's Web Site or Web Application, including content supplied by third parties, hosted by ND(J)L under this

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Agreement and (ii) agrees that such caching is not an infringement of any of Customer intellectual property rights or any third party's intellectual property rights.

**1.11 BANDWIDTH AND/OR DISK USAGE**

Customer agrees that ND(J)L shall monitor the bandwidth and/or disk usage required for the operation of Customer's Web Site or Web Application. If bandwidth or disk usage in any given month exceeds 150% of the average monthly usage in the preceding three months, ND(J)L, in its sole discretion, may assess additional charges to be levied on Customer in consideration of the additional usage.

**1.12 DISCLAIMER OF WARRANTY - WEB SERVICES AND MARKETING SERVICES**

Customer acknowledges and agrees that ND(J)L exercises no control over, and accepts no responsibility for, the content of the information passing through ND(J)L's host computers, network hubs and points of presence (the "ND(J)L Network") or the Internet. Neither ND(J)L, its employees, affiliates, agents, suppliers, third-party information providers, merchants, licensors nor the like make any warranties of any kind, either expressed or implied, including, but not limited to, warranties of merchantability or fitness for a particular purpose, or non-infringement for the services or any equipment ND(J)L provides. Neither ND(J)L, its employees, affiliates, agents, third-party information providers, merchants, licensors or the like, warrant that the services will not be interrupted or error free; nor do any of them make any warranty 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. ND(J)L is not liable for the content or loss of any data transferred either to or from customer or stored by customer or any of customer's clientele via the service(s) provided by ND(J)L.

**1.13 INDEMNIFICATION**

Customer will indemnify, save harmless, and defend ND(J)L and all directors, officers, employees, and agents of ND(J)L (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 attorneys' fees) arising out of or relating to the use of the Services by Customer, including any violation of the ND(J)L Acceptable Use Policy. Such claims shall include, but shall not be limited to, claims based upon trademark, service mark, trade name, copyright and patent infringement, trademark dilution, tortious interference with contract or prospective business relations, data protection, unfair competition, defamation or injury to reputation, or other injuries or damage to business.

**1.14 LIMITATION OF LIABILITY**

In no event shall ND(J)L be liable for any indirect, incidental, special or consequential damages, or loss of profits, revenue, data or use, suffered by customer or any third party, whether in an action in contract, tort or strict liability or other legal theory, even if ND(J)L has been advised of the possibility of such damages.

In no event will ND(J)L's liability for any damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) exceed the actual amount paid by Customer for the Service which gave rise to such damages, losses and causes of actions during the 12-month period prior to the date the damage or loss occurred or the cause of action arose. Some jurisdictions do not allow the exclusion or limitation of warranties or incidental or consequential damages, so that the above limitations or exclusions may not apply to Customer. In such jurisdictions, ND(J)L's liability (and the liability of its affiliates, agents, content providers and service providers) shall be limited to the greatest extent permitted by applicable law.

**1.15 FORCE MAJEURE**

ND(J)L shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, terrorist or other attack, fire, flood, strike or other labour disturbance, interruption of or delay in

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transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services.

**1.16 INTELLECTUAL PROPERTY**

Customer represents and warrants that Customer's use of the Services shall not infringe the intellectual property or other proprietary rights of ND(J)L or any third party. Customer further acknowledges that all right, title and interest in any and all technology, including the software that is part of or provided with the Services and any trademarks or service marks of ND(J)L (collectively, "ND(J)L Intellectual Property") is vested in ND(J)L and/or in ND(J)L's licensors. Unless otherwise specifically provided in this Agreement, Customer shall have no right, title, claims or interest in or to the ND(J)L Intellectual Property. Customer may not copy, modify or translate the ND(J)L Intellectual Property or related documentation, or decompile, disassemble or reverse engineer the ND(J)L Intellectual Property, to use it other than in connection with the Services, or grant any other person or entity the right to do so. Unless otherwise specifically provided in this Agreement, Customer is not authorised to distribute or to authorise others to distribute the ND(J)L Intellectual Property in any manner without the prior written consent of ND(J)L; provided, however, that nothing in this sentence would preclude Customer from using the ND(J)L Intellectual Property as incorporated in the Services. This paragraph shall not operate to extinguish, restrict, vary, waive or affect in any manner whatsoever any right, title or interest which Customer may now have or hereafter acquires in, or in relation to, the third-party software that is part of or provided with the Services solely to the extent such third-party licensors publicly provide such rights, title or interest in the third-party software to Customer.

**1.17 DATA PROTECTION**

In the course of the performance of this Agreement, ND(J)L may perform the statutory role under Jersey law of "Data Processor" in relation to personal data (the "Data") of which Customer has the statutory role of "Data Controller". ND(J)L represents and warrants that in processing such Data it shall take all appropriate technical and organisational measures to prevent the unauthorised or unlawful processing or disclosure of the Data. Unless otherwise specifically agreed between the parties, ND(J)L shall not disclose or share or make any other use of the Data beyond providing a secure hosting service for it. In processing such data, or data for which ND(J)L is the Data Controller, ND(J)L may make use of hosting facilities located in datacentres physically located in the United States of America. By accepting the terms this Agreement, Customer consents to the storage and processing of personal data relating to them or their employees or associates, and of personal data for which they are Data Controller, in such datacentres.

**1.18 CONFIDENTIAL INFORMATION**

Each party acknowledges that, in the course of the performance of this Agreement, it may have access to customer information and communications, including proprietary information claimed to be unique, secret, or confidential, and which constitutes the exclusive property and trade secrets of the other party ("Confidential Information"). Except as provided in ND(J)L's Acceptable Use Policy (AUP), each party agrees to maintain the confidentiality of the Confidential Information and to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this Agreement. Upon request of either party or on termination or expiration of this Agreement, each party shall return the Confidential Information of the other party then in its possession. Nothing in this Agreement shall prohibit or limit either party's use of information which (a) is now, or hereafter becomes, publicly known or available through lawful means; (b) is rightfully in receiving party's possession, as evidenced by receiving party's records; (c) is disclosed to the receiving party without confidential or proprietary restriction by a third party who rightfully possesses and rightfully discloses the information; (d) is independently developed by the receiving party without any breach of this Agreement; (e) is the subject of a written permission to disclose provided by the disclosing party; or (f) is required by law to be disclosed.

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Customer further agrees and acknowledges that ND(J)L may disclose Customer account information in accordance with ND(J)L's Acceptable Use Policy (AUP), located at <http://www.webreality.co.uk/terms>, as amended from time to time by ND(J)L effective upon posting of the revised policy at the URL.

**1.19 GOVERNING LAW.** The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the States of Jersey.

**1.20 ENFORCEMENT OF AGREEMENT**

In the event it is necessary for ND(J)L to enforce its rights under this agreement, Customer agrees to pay all fees incurred by ND(J)L (including, but not limited to, attorney's fees and collection agency fees).

**1.21 AMENDMENT**

This Agreement may be amended at any time by ND(J)L.

**1.22 ASSIGNMENT AND SEVERABILITY**

This Agreement shall be binding upon and inure to the benefit of Customer, ND(J)L and their respective successors, and assigns. Customer may not assign this Agreement without the prior written consent of ND(J)L, which consent will not be unreasonably withheld. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

**1.23 NOTICES**

All notices to Customer hereunder shall be given at the Billing Address provided on the signature page hereto. All notices to ND(J)L hereunder shall be given to:

Webreality  
Pirouet House  
Union Street  
St Helier  
JERSEY JE2 3RF

Any notice hereunder shall be in writing and shall be given by registered, certified or Express mail, or reliable overnight courier addressed to the addresses in this Agreement, or by facsimile. Notice shall be deemed to be given upon the earlier of actual receipt or three (3) days after it has been sent, properly addressed and with postage prepaid.

**1.24 ENTIRE AGREEMENT**

This Agreement, and any other document or agreements specifically identified in this Agreement, supersedes all previous representations, understandings or agreements.

**1.25 ACCEPTANCE OF SERVICES**

Acceptance of this Agreement by ND(J)L may be subject, in ND(J)L's absolute discretion, to satisfactory completion of a credit check and continued credit worthiness of Customer. Activation of service shall indicate ND(J)L's acceptance of this Agreement. Use of the ND(J)L network constitutes acceptance of this Agreement. Customer represents and warrants that Customer has full authority and right to enter into this Agreement. Customer further represents and warrants that Customer is at least 18 years of age.

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**2. ND(J)L ACCEPTABLE USE POLICY (AUP)**

**2.1 PURPOSE**

As a provider of web site hosting, and other Internet-related services, ND(J)L offers Customer, and Customer's customers and users, the means to acquire and disseminate public, private, commercial, and non-commercial information. ND(J)L respects that the Internet provides a forum for free and open discussion and dissemination of information. However, when there are competing interests at issue, ND(J)L reserves the right to take certain preventative or corrective actions. In order to protect these competing interests, ND(J)L has developed an Acceptable Use Policy ("AUP"), which is intended as a guide to Customer's rights and obligations when utilizing ND(J)L's services. This AUP will be revised from time to time. Customer's use of ND(J)L's services after changes to this AUP are posted on ND(J)L's web site, [www.webreality.co.uk](http://www.webreality.co.uk), will constitute Customer's acceptance of any new or additional terms of the AUP that result from those changes. One important aspect of the Internet is that no one party owns or controls it. This fact accounts for much of the Internet's openness and value, but it also places a high premium on the judgment and responsibility of those who use the Internet, both in the information they acquire and in the information they disseminate to others. Because ND(J)L cannot monitor or censor the Internet, and will not attempt to do so, ND(J)L cannot accept any responsibility for injury to Customer that results from inaccurate, unsuitable, offensive, or illegal Internet communications. When Customer disseminates information through the Internet, it also must keep in mind that ND(J)L does not review, edit, censor, or take responsibility for any information Customer may create. When Customer places information on the Internet, they have the same liability as other authors for copyright infringement, defamation, and other harmful speech. Also, because the information they create is carried over ND(J)L's network and may reach a large number of people, Customer's postings to the Internet may harm ND(J)L's goodwill, business reputation, and operations. For these reasons, Customers violate ND(J)L policy and the Agreement when they, their customers, affiliates, or subsidiaries engage in the prohibited activities cited in subsequent paragraphs in this Section 2.

**2.2 SPAMMING**

Sending unsolicited bulk and/or commercial messages over the Internet (known as "spamming"). When a complaint is received, ND(J)L has the discretion to determine from all of the evidence whether the email recipients were from an "opt-in" email list.

**2.3 INTELLECTUAL PROPERTY VIOLATIONS**

Engaging in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy, and patents held by individuals, corporations, or other entities. Also, engaging in activity that violates privacy, publicity, or other personal rights of others. ND(J)L is required by law to remove or block access to Customer's content upon receipt of a proper notice of copyright infringement. It is also ND(J)L's policy to terminate the privileges of customers who commit repeat violations of copyright laws.

**2.4 OBSCENE SPEECH OR MATERIALS**

Using ND(J)L's network to advertise, transmit, store, post, display, or otherwise make available child pornography or obscene speech or material. ND(J)L is required by law to notify law enforcement agencies when it becomes aware of the presence of child pornography on or being transmitted through ND(J)L's network.

**2.5 DEFAMATORY OR ABUSIVE LANGUAGE**

Using ND(J)L's network as a means to transmit or post defamatory, harassing, abusive, or threatening language.

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**2.6 FORGING OF HEADERS**

Forging or misrepresenting message headers, whether in whole or in part, to mask the originator of the message.

**2.7 ILLEGAL OR UNAUTHORIZED ACCESS TO OTHER COMPUTERS OR NETWORKS**

Accessing illegally or without authorization computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (i.e. port scan, stealth scan, or other information gathering activity).

**2.8 DISTRIBUTION OF INTERNET VIRUSES, WORMS, TROJAN HORSES, OR OTHER DESTRUCTIVE ACTIVITIES**

Distributing information regarding the creation of and sending Internet viruses, worms, Trojan horses, pinging, flooding, mail bombing, or denial of service attacks. Also, activities that disrupt the use of or interfere with the ability of others to effectively use the network or any connected network, system, service, or equipment.

**2.9 FACILITATING A VIOLATION OF THIS AUP**

Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to spam, initiation of pinging, flooding, mail bombing, denial of service attacks, and piracy of software.

**2.10 FORUMS, SOCIAL MEDIA WEB SITES**

ND(J)L reserves the right not to accept postings from third party web sites where we have actual knowledge that the content of the web site violates the AUP.

**2.11 OTHER ILLEGAL ACTIVITIES**

Engaging in activities that are determined to be illegal, including advertising, transmitting, or otherwise making available ponzi schemes, pyramid schemes, fraudulently charging credit cards, and pirating software.

**2.12 OTHER ACTIVITIES**

Engaging in activities, whether lawful or unlawful, that ND(J)L determines to be harmful to its subscribers, operations, reputation, goodwill, or customer relations.

**2.13 REMEDIES**

ND(J)L will not, as an ordinary practice, monitor the communications of its customers to ensure that they comply with ND(J)L policy or applicable law. When ND(J)L becomes aware of harmful activities, however, it may take any action to stop the harmful activity, including but not limited to, removing information, shutting down a web site, implementing screening software designed to block offending transmissions, denying access to the Internet, or take any other action it deems appropriate. ND(J)L requires that Customer will cooperate with ND(J)L in any corrective or preventive action that ND(J)L deems necessary. Failure to cooperate with such corrective or preventive measures is a violation of ND(J)L policy.

**2.14 SECURITY OF COMMUNICATIONS**

In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, ND(J)L urges Customer to assume that all of their on-line communications are insecure. ND(J)L cannot take any responsibility for the security of information transmitted over ND(J)L's facilities.

**2.15 MONITORING OF ACTIVITY**

ND(J)L will not intentionally monitor private electronic mail messages sent or received by its customers unless required to do so by law, governmental authority, or when public safety is at stake. ND(J)L may, however, monitor its service electronically to determine that its facilities

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are operating satisfactorily. Also, ND(J)L may disclose information, including but not limited to, information concerning a customer, a transmission made using our network, or a web site, in order to comply with a court order, subpoena, summons, discovery request, warrant, statute, regulation, or governmental request. ND(J)L assumes no obligation to inform Customer that Customer's information has been provided and in some cases may be prohibited by law from giving such notice. ND(J)L may disclose subscriber information or information transmitted over its network where necessary to protect ND(J)L and others from harm, or where such disclosure is necessary to the proper operation of the system.

**2.16 INDEMNITY**

In accepting the Agreement, Customer indemnifies ND(J)L for any violation of the service agreement, law, or ND(J)L policy that results in loss to ND(J)L or the bringing of any claim against ND(J)L by any third-party. This means that if ND(J)L is sued because of Customer's activity, or because of the activity of a customer of Customer, Customer will pay any damages awarded against ND(J)L, plus costs and reasonable legal fees.

**2.17 COMPLAINTS**

Any complaints about a Webreality customer's violation of this AUP should be sent to [support@webreality.co.uk](mailto:support@webreality.co.uk).



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### **3. DOMAIN SERVICES**

#### **3.1 INTRODUCTION**

By selecting ND(J)L's Domain Service you have agreed to establish an account with us for such services. When you use your account or permit someone else to use your account to purchase or otherwise acquire access to additional ND(J)L service(s) or to modify or cancel your ND(J)L service(s) (even if we were not notified of such authorization), this Agreement covers any such service or actions.

#### **3.2. ACCURATE INFORMATION**

As consideration for the Domain Service, you agree to: (1) provide certain current, complete and accurate information about you as required by the application process; and (2) maintain and update this information as needed to keep it current, complete and accurate. We rely on this information to send you important information and notices regarding your account and our services.

#### **3.3 DOMAIN NAME DISPUTES**

You agree that in the event a domain name dispute arises with any third party, you will indemnify and hold us harmless pursuant to the terms and conditions set forth below in this Agreement. If we are notified that a complaint has been filed with a judicial or administrative body regarding your use of our domain name registration services, you agree not to make any changes to your domain name record without our prior approval. We may not allow you to make changes to such domain name record until (i) we are directed to do so by the judicial or administrative body, or (ii) we receive notification by you and the other party contesting your registration and use of our domain name registration services that the dispute has been settled. Furthermore, you agree that if you are subject to litigation regarding your registration and use of our domain name registration services, we may deposit control of your domain name record into the registry of the judicial body by supplying a party with a registrar certificate from us.

#### **3.4 AGENTS**

You agree that, if your agent (eg a lawyer, employee, etc) purchased our service(s) on your behalf, you are nonetheless bound as a principal by all terms and conditions herein, including the dispute policy. Your continued use of our services shall ratify any unauthorised actions of your agent. By acting on your behalf, your agent certifies that he or she is authorised to apply for our services on your behalf, that he or she is authorised to bind you to the terms and conditions of this Agreement and that he or she has apprised you of the terms and conditions of this Agreement. In addition, you are responsible for any errors made by your agent. We will not refund fees paid by you or your agent on your behalf for any reason, including, but not limited to, in the event that your agent fails to comply with the terms and conditions of this Agreement, or if your agent incorrectly provides information in the application or renewal process.

#### **3.5 INDEMNITY**

You agree to release, indemnify, and hold ND(J)L and our contractors, agents, employees, officers, directors, shareholders, affiliates and assigns harmless from all liabilities, claims, damages, costs and expenses, including reasonable legal fees and expenses, of third parties relating to or arising under this Agreement, the Domain Services provided hereunder or your use of the Domain Services, including without limitation infringement or dilution by you, or someone else using our service(s) from your computer, of any intellectual property or other proprietary right of any person or entity, or a violation of any of our operating rules or policies relating to the service(s) provided. If we are threatened with suit or sued by a third party, we may seek written assurances from you concerning your promise to indemnify us; your failure to provide those assurances may be considered by us to be a material breach of this Agreement. By registering a domain name you agree to keep ND(J)L and its directors fully and effectively indemnified at all times and indemnify ND(J)L and its directors accordingly against all costs, claims, liabilities actions and expenses arising directly or indirectly through

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your choice and use of the domain name or by any breach by you of your obligations contained herein.

**3.6 BREACH**

You agree that your failure to abide by any provision of this Agreement, any ND(J)L operating rule or policy, the dispute policy, or your wilful provision of inaccurate or unreliable information as part of the application process, or your failure to respond for over fifteen (15) calendar days to enquiries from us concerning the accuracy of the contact details associated with your domain name registration, may be considered by us to be a material breach and that we may provide a written notice, describing the breach, to you. If within ten (10) calendar days of the date of such notice, you fail to provide evidence, which is reasonably satisfactory to us, that you have not breached your obligations under the Agreement, then we may delete the registration or reservation of your domain name and/or terminate the other ND(J)L service(s) you are using without further notice. We will not refund any fees paid by you if we terminate your Agreement due to your breach. Any such breach by you shall not be deemed to be excused simply because we did not act earlier in response to that, or any other breach, by you.

**3.7 NO GUARANTEE**

You agree that, by registration of your chosen domain name, such registration does not confer immunity from objection to either the registration or use of your domain name.

**3.8 REPRESENTATIONS AND WARRANTIES**

You agree and warrant that: (i) the information that you or your agent on your behalf provide to us during the application process to register your domain name or to apply for other ND(J)L service(s) is, accurate and complete, and that any future changes to this information will be provided to us in a timely manner according to the modification procedures in place at that time, (ii) neither the registration of your domain name nor the manner in which you intend to use such domain name will directly or indirectly infringe the legal rights of a third party, (iii) you have all requisite power and authority to execute this Agreement and to perform your obligations hereunder, and (iv) you are of legal age to enter into this Agreement. You agree that your use of our service(s) is solely at your own risk. You agree that all of our services are provided on an "as is," and "as available" basis. We do not and will not determine the legality of your domain name and do not otherwise evaluate whether your domain name, if used as a trademark or service mark, infringes upon the rights of others. You agree to use your domain name only as a web address and not as a trademark or service mark. We do not have any duty to investigate or search the legal availability of any name that may be used by you as your domain name. You agree that we have the unilateral right to suspend or terminate your use of your domain name at any time if we are presented with claims by third parties that are, in our sole judgment, supported by any evidence that your use of your domain name infringes upon the rights of others.

**3.9 RIGHT OF REFUSAL**

We, in our sole discretion, reserve the right to refuse to register your chosen domain name. In the event we do not register your domain name agree to refund any applicable fee(s) you have paid. You agree that we shall not be liable to you for loss or damages that may result from our refusal to register.

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