



## ***SonicSpider LLC*** **Terms of Service Agreement**

### **1.0 TERMS OF SERVICE**

Our services will be effective upon occurrence of all of the following:

- 1.1 Services, as described online at: <http://www.esonicspider.com>, will be outlined in proposals signed by the customer.
- 1.2 Customer means an end user who is utilizing services provided by SonicSpider.
- 1.3 You, the customer, accept this agreement with SonicSpider LLC without modification.
- 1.4 SonicSpider receives payment for services, consultation, hosting, development, domain registration, renewal, and reinstatement fees as applicable.
- 1.5 The terms and conditions set forth herein constitute the full and complete agreement between the customer and SonicSpider. The customer's agreement to be bound by these terms is acknowledged by their use of the SonicSpider Web Site, Hosting Services, Support Services and/or any SonicSpider software made available to the customer. The terms contained herein supersede and replace any other agreement or negotiation between the customer and SonicSpider whether oral, written, or otherwise, including any statements made by any representative of SonicSpider at any time.

### **2.0 GENERAL WEB DEVELOPMENT SERVICES**

- 2.1 Web Development Standards. All web development is done to W3C standards for XHTML and CSS. All web sites adhere to the first level of accessibility as in the 508 Law.
- 2.2 Project Proposal. All web services associated with a project or maintenance of a web site are outlined in a separate written proposal.
- 2.3 Additional Costs. Due to the nature of web development projects additional ideas and features may need to be added to a project. These additions are at an additional cost to the customer. SonicSpider will do their best to notify the customer of additional costs. However, it should be assumed by the customer that additions to the project that are not outlined in the proposal are added costs.
- 2.4 Project Delays. If the customer is the cause of a project being on hold for over 2 months, SonicSpider will require them to attend a "ReStart" meeting to review the scope of the project. This meeting will be billed to the client. The client will also be responsible for any additional time needed for review to get the project back up and running.
- 2.5 Major Layout Updates. If an update to a web page, either during the development process or in the maintenance phase, cause a restructuring of the code, the customer can be charged up to the full price of the original page.

- 2.6 Design and Page Layout Approval. After the customer has approved the web site design and page layout, done either by SonicSpider LLC or a design company of their choice, all changes to the page layout and design will result in additional costs to the project.
- 2.7 Development Restrictions. A website by nature is organic and can easily grow and expand. However, a web site can only remain in the development phase for up to 1 year from the start of the project. After one year SonicSpider will treat the site as if it is in the maintenance phase and will charge for updates and changes. Custom projects are excluded from this.
- 2.8 All custom project processes and procedures will be governed by the document:  
<http://www.sonicspider.com/downloads/WebDevGuidelines.pdf>

### **3.0 REQUIRED DOMAIN INFORMATION**

- 3.1 Registration Information. As a part of the domain registration process and in accordance with ICANN (Internet Corporation For Assigned Names and Numbers) policies, a domain registrant is required to submit and keep current the following information:
  - 3.1.1 The domain registrant's name and address
  - 3.1.2 The domain being requested
  - 3.1.3 Administrative contact information: name, address, email address, and phone number.
  - 3.1.4 Billing contact information.
- 3.2 Additional registration information. In accordance with ICANN policies, SonicSpider is obligated to maintain additional information relating to domain registration.
  - 3.2.1 Records of account for the customer's domain registration, including dates and amounts of all payments and refunds
  - 3.2.2 The original creation date of the customer's account
  - 3.2.3 IP address of the primary name server and any secondary name server
  - 3.2.4 Information regarding all other activity between the customer and SonicSpider regarding the customer's domain registration and related services.

### **4.0 EMAIL SERVICES**

- 4.1 SonicSpider provides 10 free email accounts through Enom.com. However, this service is basic and should not be considered a robust email service. SonicSpider will provide limited set up and support for this free service. If the customer would like additional assistance it will be billable to you at our current rate.
- 4.2 SonicSpider also provides premium email services which can be purchased by the customer at any time. These services are more robust and can be customized to fit the customer's needs.
- 4.3 All email set up and support will be subject to our billable rate.

### **5.0 FEES: PAYMENTS**

- 5.1 Hosting fees are to be paid for the upcoming term or service period. Payments must be received thirty (30) day prior to the renewal date to ensure no interruptions in your service. A \$10.00 late charge will be assessed after 30 days from the date of the statement. All web application set up fees will be billed in advance. All other service fees will be billed to the customer as completed and are subject to the late fee

after 30 days.

- 5.2 SonicSpider reserves the right to offer subsequent promotional rates which may or may not be more favorable than the terms under which the customer entered this agreement. Any such periodic special rates shall not effect the then existing rights and responsibilities of each party. SonicSpider also reserves the right to change the rate charged for any such fee under this agreement within the thirty (30) day time frame.
- 5.3 SonicSpider charges a non-refundable setup fee (as well as periodic service fees which, in some cases may be refundable, as further set forth elsewhere herein.) According to the services the customer orders from SonicSpider, SonicSpider may also charge the customer Domain Registration Fees and specifically reserves the right to institute additional charges upon notice to the customer. SonicSpider also reserves the right to alter, change, amend, or delete charges. SonicSpider further reserves the right to institute new services and charge fees in association with the provision of such new services as it deems appropriate.
- 5.4 Payment of Fees - SonicSpider accepts payment by credit card (American Express, Visa, MasterCard, Discover), and by personal check, cashiers check, or money order.
- 5.5 SonicSpider LLC utilizes software tools which allow for the efficient management of web sites. These tools utilize current XHTML & CSS1 W3C standards.

Customers who physically alter the web coding of their site, and then return to SonicSpider LLC to manage, will be billed at the normal hourly rate for alterations necessary to restore the web site to a manageable current HTML W3C compliant standard.

#### 5.6 Payment by Credit Card

- 5.6.1 Prior to activation of the customer's user account and at any applicable time thereafter, the customer will agree to allow SonicSpider to charge their provided credit card and at stated regular intervals, the agreed service fee amount for the stated period, together, with any SonicSpider set-up charges, registration fees, or any other charges outlined herein as may be applicable. The customer further authorizes SonicSpider to charge their credit card for all subsequent periodic fees at, or a reasonable period in advance of, the commencement of any such subsequent period. The customer agrees to maintain current valid existing credit card information with SonicSpider for the purpose of satisfying the SonicSpider charges as they become due. If the customer's credit card is rejected, the client will be billed regularly and will be stripped of any discount. The client is responsible for getting payment to SonicSpider before 30 days of the original invoice day or they will be subject to a late fee. SonicSpider also reserves the right to charge a \$25.00 administration fee for any rejected credit card processing. Refusal or rejection of any such charge or any portion thereof, is grounds for account suspension and/or termination at the sole option of SonicSpider under Paragraph 8 herein.

#### 5.7 Payment by Checks

- 5.7.1 Prior to activation of the user account, the customer agrees to submit a check, payable in U.S. dollars, against a bank located within the United States. SonicSpider is under no obligation to initiate service until the proceeds of such check have been cleared by such financial institution and have been received by SonicSpider. Invoices will be submitted to the customer as a courtesy only. Payment for subsequent fees are due and payable immediately upon receipt of invoice, and in no instance later than the expiration of the last day of the previous period, without regard to any invoice. It is the customer's responsibility when paying by check, to make sure that their payment is received by SonicSpider. An administrative fee of \$25.00 will be charged for the refusal, rejection, or return of any such check for any reason whatsoever or any portion thereof. In addition, refusal, rejection, or return of any such check for any reason whatsoever or any portion thereof, is grounds for account suspension and/or termination at the sole option of SonicSpider.

- 5.8 Refunds of service fees will be made only for pre-payment of service fees beyond the renewal date, following the effective notice and termination of this agreement.
- 5.9 All refunds shall be pro-rated based upon the number of days for which service remains unused, as of that renewal date. SonicSpider may grant refunds under any other circumstance it deems appropriate without waiving any other rights hereunder.
- 5.10 Refund of hosting fees. If hosting is terminated before the purchased period, it will be prorated based on our current monthly hosting rate. If this amount is more than what the client originally paid they will need to pay the balance before SonicSpider will release a copy of their web site to them.

## 6.0 ORDER ACCEPTANCE

- 6.1 All orders are subject to acceptance by SonicSpider. An order will be deemed accepted by SonicSpider when written confirmation of the order is sent to the customer. SonicSpider may refuse to accept any order, or delay acceptance, pending fulfillment of conditions SonicSpider may choose to impose. Such refusal or such conditions may not be unreasonable, however, and SonicSpider agrees to provide the customer with reasonable notice via email or fax, of any intent to delay or decline the acceptance of any order.

## 7.0 REGISTRATION RENEWAL: DOMAINS

- 7.1 Renewal obligations. The customer is responsible for ensuring that any and all domains and additional services are renewed prior to their expiration date, should they desire to renew. The customer may renew their domain and hosting services any time before the expiration. However a renewal notice is required thirty (30) days prior to the expiration date of their intent to renew to ensure no breaks in service.
- 7.2 Auto-renewal. All services will automatically be renewed unless there is a written statement of termination from the customer, mailed or faxed to SonicSpider. If paying with a credit card, the customer authorizes SonicSpider to automatically charge their card at the beginning of every term.
- 7.3 **Termination of Renewal must be received by SonicSpider no later than thirty (30) days prior to the renewal date.** In the absence of such notification from the customer, SonicSpider will automatically renew for a period of one year any domain that is up for renewal, and charge the credit card information filed with SonicSpider, at SonicSpider's current rates. The customer is responsible for the credit card information provided to SonicSpider and must promptly inform SonicSpider of any changes thereto (changes in expiration date and account number). If the credit card has expired or is invalid, the customer is solely responsible for a failure to renew and SonicSpider shall not be liable for their failure. If correct information is not provided prior to the expiration date of the domain their registration will not be renewed.

## 8.0 PROPERTY RIGHTS/ CONFIDENTIALITY

- 8.1 Ownership of data. The customer agrees and acknowledges that SonicSpider owns all databases, compilation, collective and similar rights, titles and interests worldwide in our domain databases, and information and derivative works generated from such domain databases.
- 8.2 Ownership of web site content. The customer owns all rights to their web site content, design, and domain name.
- 8.3 SonicSpider owns all rights, titles, and interests in SonicSpiders' trade names, service marks, inventions, copyrights, trade secrets, patents, and know-how relating to the design, function, or operation of plans

and the hardware and software systems, and resources necessary to provide the individual service elements of which they consist. This agreement does not constitute a license to the customer to use SonicSpiders' trade names or service marks. The use by the customer of the other property rights mentioned herein is authorized only for the purpose of marketing and selling plans.

- 8.4 It is understood and agreed that during the term of this agreement, and thereafter, the customer may come into possession of information which is the confidential and proprietary information of SonicSpider, including but not limited to, the SonicSpider customer service and maintenance tools. The customer acknowledges that all rights and titles to any such SonicSpider intellectual property shall remain the sole property of SonicSpider and that the customer has no rights, title, or interest therein. The customer further agrees not to provide access to SonicSpider services to any third party. The customer agrees not to assist any third party in any way to translate, decompile, reverse engineer, disassemble, modify, reproduce, rent, lease, lend, license, distribute, market, or otherwise dispose of any portion of the SonicSpider Services. Any and all right or title to any engineering, coding, programming, or customer service workaround, or other modification of the SonicSpider service shall also remain the sole property of SonicSpider.
- 8.5 During the term of this agreement, the customer may have access to certain information and materials relating to the SonicSpider business, customers, software technology, and marketing which SonicSpider treats as confidential. The customer agrees to, at all times during the term of this agreement and otherwise as set forth herein: (i) hold in confidence, and not disclose or reveal to any person or entity, without the express prior written consent of SonicSpider; and (ii) not use or disclose any of the confidential information for any purpose at any time, other than pursuant to your rights under this agreement, for the purpose intended. These obligations shall continue indefinitely for so long as the confidential information is a trade secret under applicable law and shall continue for three (3) years following termination of this agreement with respect to confidential information which does not rise to the level of a trade secret. **SonicSpider will not sell or distribute any customer information in any of our databases.**

## 9.0 LICENSE

- 9.1 SonicSpider, pursuant to the terms and conditions set forth herein, hereby grants the customer a non-exclusive, limited, personal, non-transferable license to use the SonicSpider Web Hosting Service for the term of the agreement, as set forth herein.

## 10.0 TERM, TERMINATION

- 10.1 The initial term of this agreement shall be one (1) month, with an automatic renewal without notification until notified for termination. This agreement shall run in accordance with the term. All terminations should be faxed to: (760) 631-3086 or you can mail a hard copy to: SonicSpider, 5256 South Mission Rd Suite 110, Bonsall, CA 92003. The account will be automatically renewed on a regular basis in accordance with the term or subsequent change to that term, unless terminated in one of the following ways:
- 10.1.1 Customer - by notifying SonicSpider in writing thirty (30) days prior to renewal of this agreement. If notification is not received thirty (30) days prior, a refund will not be issued.
  - 10.1.2 SonicSpider - upon thirty (30) days written notice, if customer breaches any material and/or substantial provision of this agreement which has not been resolved by the end of the thirty (30) days.
  - 10.1.3 Set up fees, installation fees, host system change, other fees on services already performed are non-refundable at any time. All other refunds are pro-rated.
  - 10.1.4 For billing issues please contact SonicSpider at (760) 631-3085.
  - 10.1.5 For changes to the customer's account regarding method of payment or to update information please contact SonicSpider at (760) 631-3085.

## 10.2 Non-payment on renewals

10.2.1 All non-sufficient funds checks will not be redeposited. Another method of payment will have to be used. A cashiers check, money order, or credit card can be used. The web site will be on hold until payment is received. A \$25.00 administration fee plus any bank fees will apply to all non-sufficient funds checks.

10.3 Suspension - At the sole option of SonicSpider, for any reason set forth herein or in the event that the customer breaches any term of this agreement, including but not limited, to Payment of Fees, and the Acceptable Use Policy, SonicSpider may suspend the customer's account by deactivating any access by the customer or by web users to any information contained on the SonicSpider servers related to their account, while maintaining the information and data related to their account upon the SonicSpider servers. Suspension shall specifically include the disabling of the customer's hosted domain and/or any access to information or data related to the customer's account. In the event of any such suspension, the customer will be notified and given an opportunity to correct such breach. In the event that such breach is not corrected within ten (10) days, the account may be terminated.

10.4 Service charges will continue to accrue on suspended accounts as if they were not suspended. The customer will remain responsible for the payment of any such charges during any such period of suspension.

10.5 Termination - This agreement and all of its terms shall remain in full force and effect until it is terminated. Termination shall include the removal of any and all of the customer's information from the SonicSpider servers. Such information or data may or may not be made available to the customer by SonicSpider after any such termination. This agreement may be terminated either (a) after a period of suspension (b) by either party upon thirty (30) days notice in advance of a renewal period for any reason.

10.6 In the event of termination, (a) there will be no refund provided to the customer. In addition, SonicSpider may charge the customer an additional termination fee not to exceed \$100.00 at its sole option. The assessment of this termination fee shall not effect the rights of SonicSpider to recover from their losses, damages, indemnity, defense costs, expert costs, collection costs, and/or attorney fees, or other costs of any kind as may be applicable under California law . (b) In the event of termination of services any service fees paid in advance beyond the next renewal date will be refunded to the customer calculated at a non-discounted rate. This refund shall not include any discounts, set-up fees, domain registration fees, or other fees which are all non-refundable.

## 11.0 NOTICE

11.1 With respect to services of process, as set forth in this agreement, all notices may be sent by email, fax, or express mail to the email address, fax number, or address most recently provided and will be effective upon transmission.

## 12.0 WARRANTY AND LIABILITY

12.1 Disclaimer of warranty. SonicSpider makes no representations or warranties of any kind whatsoever, express or implied, in connection with this agreement of its domain registration services. SonicSpider makes no representations or warranties of any kind whatsoever that registration or use of a domain under this agreement will prevent challenges to customer's domain registration, or from suspension, cancellation, or transfer of any domain registered to the customer.

12.2 Limitation of liability- The customer agrees that SonicSpider will not be liable for any of the following:

- 12.2.1 Suspension or loss of the domain registration in the customer's name
  - 12.2.2 Use of the customer's domain registration by the customer or others, whether or not authorized by them to have such use
  - 12.2.3 Interruption of business
  - 12.2.4 Access delays, denial of service attacks, or non-delivery, mis-delivery, corruption, destruction, or other modification.
  - 12.2.5 Events beyond SonicSpider's reasonable control
  - 12.2.6 The processing of this application
  - 12.2.7 Application of the dispute policy
- 12.3 SonicSpider will also not be liable for any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action, whether in contract or negligence, even if SonicSpider has been advised of the possibility of such damages. In no event shall SonicSpider's maximum aggregate liability exceed the total amount paid by the customer for registration of the domain that is at issue.

### **13.0 RELATIONSHIP OF PARTIES**

- 13.1 The relationship between SonicSpider and customer is that of vendor and vendee. They shall not be construed as being joint ventures, franchiser/franchisee, or employer/employee. This agreement is a commercial agreement between businesses, not a consumer agreement. Customer has no authority, apparent or otherwise, to contract for, or on behalf of, SonicSpider, or in any way legally bind SonicSpider in any fashion, nor shall Customer be authorized to make any representations about SonicSpider or its services other than to set forth SonicSpider responsibilities, as outlined in this agreement.

### **14.0 INDEMNITY**

- 14.1 The customer agrees to fully defend and indemnify and hold harmless SonicSpider of, and from, any and all third party claims, causes of action, demands, costs, damages, including both direct and consequential damages, specifically including attorney fees and costs, expert fees and costs, and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any breach or claim of breach of this agreement, or the customer's negligence, whether active or passive, or any negligence of SonicSpider in any way related to their use of the SonicSpider service, or any portion thereof.
- 14.2 The customer agrees to fully defend, indemnify, and hold harmless SonicSpider, of and from, any and all third party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorney's fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any violation or claimed violation of any copyright or other intellectual property right of any third party which is in any way related to the customer's use of the SonicSider service or any portion thereof. Choice of counsel remains exclusively that of Sonic Spider.
- 14.3 The customer agrees that upon the assignment of their user ID and password, that they will maintain the confidentiality of their account information and assume all responsibility of and from any loss, theft, or other destruction of any data as the result of any access to the customer's account via the use of their user ID. The customer further agrees to defend, indemnify, and hold harmless SonicSpider of any and all forms of third party claims and damages including attorney fees and costs, expert fees and costs, and/or arbitration fees and costs, as the result of any claim of damages in any way related to the disclosure of the customer's confidential User ID and Password information.

### **15.0 DISPUTES**

- 15.1 The parties shall attempt to resolve all disputes arising out of this agreement in a spirit of cooperation without formal proceedings.

15.2 Any dispute that cannot be resolved (other than the collection of money due to unpaid invoices) shall be subject to arbitration upon written demand of either party.

**16.0 REQUIRED NOTES**

16.1 Copyright Infringement Claims - Any notice concerning any claim of copyright infringement should be addressed to SonicSpider LLC, COPYRIGHT INFRINGEMENT CLAIM, 5256 Mission Rd. Suite 110, Bonsall, CA 92003 Telephone (760) 631-3085.

16.2 California - Pursuant to the terms of The Electronic Commerce Act of 1984, please be advised that, as may be applicable to you , the customer, under California Law, if you are unsatisfied with the manner in which a complaint that you may have regarding the SonicSpider service, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs, in writing, at 1020 N. Street, #501, Sacramento, CA 95814 or by telephone at 1-916-445-1254.

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