

TERMS AND CONDITIONS



1. DEFINITIONS

1.1. The definitions in this clause apply to this Agreement.

Agreement: these terms of business and the Front Sheet.

Business Day: a day other than a Saturday or Sunday or public holiday in England when banks in London are open for business.

Charges: the charges in respect of the Services set out in the Front Sheet.

Front Sheet: the attached front sheet containing the details of the Services and other matters as agreed between the parties.

Intellectual Property Rights: all intellectual property rights , whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Server (if applicable): a computer server administered by the Supplier.

Services: the services to be provided as set out on the Front Sheet.

Site (if applicable): the website to be hosted by the Supplier pursuant to this Agreement (if forming part of the Services).

Site Content (if applicable): the content provided and/or uploaded to Site by the Customer (or on their behalf by the Supplier) and any Visitors.

Visitor (if applicable): a visitor to the Site.

2. SCOPE OF THE PROJECT

The Supplier shall provide the Services and, if applicable, host the Site from the Server.

3. CUSTOMER RESPONSIBILITIES

The Customer acknowledges that the Supplier’s ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information and data that the Customer provides to the Supplier.

4. CHARGES AND PAYMENT

4.1. The Customer shall pay to the Supplier the Charges set out on the Front Sheet within 14 days of the date of the Supplier’s invoice. Any ongoing licence fees shall be paid monthly in advance.

4.2. All Charges are exclusive of VAT.

4.3. If the Customer fails to pay any amount payable by it under the Agreement, the Supplier shall be entitled to charge the Customer interest on the overdue amount. Interest shall be payable by the Customer immediately on demand, from the due date up to the date of actual payment at the rate of 5% per year above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5. WARRANTIES

5.1. Each party promises to the other party that it has full power and authority to enter into and perform this Agreement.

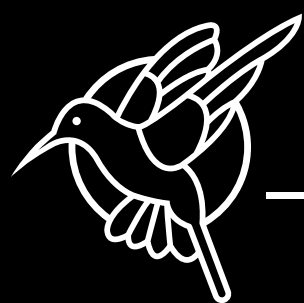
5.2. The Supplier shall perform the Services with reasonable care and skill.

5.3. The Supplier promises that the Site will perform substantially in accordance with the specification set out on the Front Sheet when it goes live. If this is not the case, the Supplier shall carry out the necessary work to get the Site to the correct specification.

5.4. The Supplier does not promise that the Site will always be available. Provided the Supplier takes reasonable steps to remedy any interruption to the availability of the Site then it shall not have any further liability to the Customer.

5.5. The warranty set out in clause 5.3 shall not apply to the extent that any failure is caused by the Customer or any other third party.

5.6. This Agreement sets out the full extent of the Supplier’s obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.



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6. LIMITATION OF REMEDIES AND LIABILITY

6.1. Nothing in this Agreement shall operate to exclude or limit the Supplier’s liability for:

- 6.1.1. death or personal injury caused by its negligence; or
- 6.1.2. any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 6.1.3. fraud; or
- 6.1.4. any other liability which cannot be excluded or limited under applicable law.

6.2. The Supplier shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

6.3. Subject to clause 6.1, the Supplier’s total liability in respect of claims based on events in any calendar year arising out of or in connection with this Agreement, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the total Charges payable by the Customer to the Supplier under this Agreement in that calendar year.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. All Intellectual Property Rights in the Site and arising in connection with this Agreement shall belong to the Supplier. The Supplier hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site.

7.2. The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Site Content or the Site infringes the Intellectual Property Rights of a third party.

8. SITE CONTENT (IF APPLICABLE)

8.1. The Customer shall ensure that the Site Content does not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).

8.2. The Supplier shall grant the Customer access to the Server in order to update information held on the Site.

8.3. The Customer acknowledges that the Supplier has no control over the Site Content and does not purport to monitor the content of the Site. The Supplier reserves the right to remove Site Content where it reasonably suspects such content is Inappropriate Content. The Supplier shall notify the Customer promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.

8.4. The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Site Content includes Inappropriate Content.

9. DATA PROTECTION

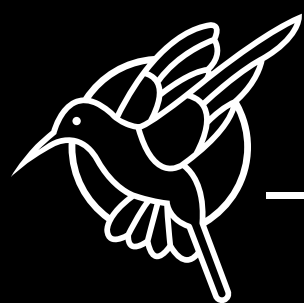
9.1. The Supplier warrants that, to the extent it processes any Personal Data on behalf of the Customer:

- 9.1.1. it shall act only on instructions from the Customer; and
- 9.1.2. it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

9.2. In this clause 9, **Personal Data** has the meaning given in the Data Protection Act 1998.

10. TERM AND TERMINATION

10.1. This Agreement shall start on the Commencement Date and shall run for the minimum length set out as part of the Gcloud agreement. If no minimum period is stated, the Agreement shall run until the Services have been completed to the reasonable satisfaction of the Customer. Either party may end the Agreement at the end of any minimum period by giving at least one month’s prior notice in writing to the other party. If no notice is served, then the hosting element of the Agreement shall renew on a monthly basis, which may be ended by either party giving at least one month’s notice to the other.



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10.2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- 10.2.1. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- 10.2.2. the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 10.2.3. the other party becomes the subject of any form of insolvency event or arrangement;
- 10.2.4. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 10.2.5. any warranty given by the other party in clause 8 of this Agreement is found to be untrue or misleading.

10.3. On termination of this Agreement by the Supplier pursuant to clause 10.2, all licences granted by the Supplier under this Agreement shall terminate immediately.

10.4. On expiry or termination of this Agreement otherwise than on termination by the Supplier pursuant to clause 10.2, the Supplier shall promptly return all Site Content to the Customer.

10.5. On expiry or termination of this Agreement, all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

11. FORCE MAJEURE

A party who becomes aware of any event arising which is beyond the reasonable control of the affected party which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement shall immediately notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take reasonable steps to mitigate the effect of event.

12. CONFIDENTIALITY

12.1. The definition in this clause applies in this Agreement.

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

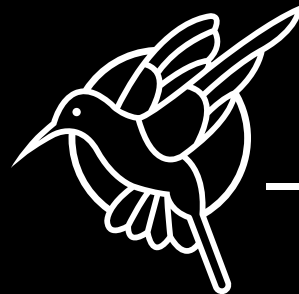
12.2. Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

12.3. Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

12.4. The obligations set out in this clause 12 shall not apply to Confidential Information which the receiving party can demonstrate:

- 12.4.1. is or has become publicly known other than through breach of this clause 13; or
- 12.4.2. was in possession of the receiving party prior to disclosure by the other party; or
- 12.4.3. was received by the receiving party from an independent third party who has full right of disclosure; or
- 12.4.4. was independently developed by the receiving party; or
- 12.4.5. was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

12.5. The obligations of confidentiality in this clause 13 shall not be affected by the expiry or termination of this agreement.



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13. NOTICES

- 13.1. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 13.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 13.1.2. sent by fax to its main fax number.
- 13.2. Any notice shall be deemed to have been received:
- 13.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 13.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
 - 13.2.3. if sent by fax, at 9.00 am on the next Business Day after transmission.
- 13.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

14. ASSIGNMENT

Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

15. ENTIRE AGREEMENT

- 15.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2. Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

16. THIRD PARTY RIGHTS

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

17. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. WAIVER

If we or you delay or do not take action to enforce our or your rights under a Contract this does not prevent either we or you from taking action later.

19. SEVERANCE

If any court or competent authority decides that any of the provisions of this Agreement are invalid, unlawful or unenforceable to any extent, the condition will, to that extent only, be severed from the remaining conditions, which will continue to be valid to the fullest extent permitted by law.

20. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

21. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

