

These Terms and Conditions shall apply to all Services provided by us, Webelectrix Ltd, a company registered in England under number 08381605, whose registered office address is at Tithe Barn Cottage, 2 – 4 Manor Road, Mears Ashby, Northamptonshire NN6 0DU (“the Company”).

We provide our Services to businesses only. We do not provide our Services to Consumers (as defined in the Consumer Rights Act 2015).

1. Definitions and Interpretation: In these Terms and Conditions, the following expressions have the following meanings:

“**Authorised User**” means each user authorised to use the Software. The Customer is liable for every action and inaction of the Authorised Users;

“**Customer**” means the individual, firm or corporate body purchasing the Services. Where an individual is entering into this Contract on behalf of a business, the individual confirms they have the authority to do so and to contractually bind that business and the business shall be the Customer in the context of this Contract;

“**Customer Data**” means the data inputted to the Software by the Customer (or the Customer’s authorised agents), authorised users, or us on the Customer’s behalf, for the purpose of using the Software or facilitating the Customer’s use of the Software;

“**Contract**” means the contract formed as detailed in clause 2, which includes the acceptance of these Terms and Conditions;

“**Quotation**” means our quotation to provide the Services, which unless otherwise specified, remains open for acceptance for a period of 30 days and constitutes our entire scope of works;

“**Services**” means the design, hosting and/or any other services provided by the Company to the Customer; and

“**Software**” means the project software designed by the Company.

1.1 Each reference in these Terms and Conditions to:

1.1.1 “we”, “us” and “our” is a reference to the Company;

1.1.2 “you” and “your” is a reference to the Customer;

1.1.3 “writing” and “written” includes emails;

1.1.4 a statute is a reference to that statute as amended or re-enacted at the relevant time;

1.1.5 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

1.1.6 a clause refers to a clause of these Terms and Conditions;

1.1.7 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.

1.2 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation.

1.3 Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender. References to persons shall include corporations.

2. The Contract

2.1 We will provide you with a written Quotation for our Services. The acceptance of our Quotation, electronically or otherwise, or the placement of an order, creates a legally binding Contract between you and us, and includes the acceptance of these Terms and Conditions, which will apply between us.

2.2 You are responsible for the accuracy of any information you submit to us and for ensuring that our Quotation reflects your requirements. Our Quotation is based on the information provided to us at the time we prepare it. If any errors or discrepancies become evident, we reserve the right to make adjustments to it.

2.3 You agree to provide us with any information, advice and assistance as we may reasonably require within sufficient time to enable us to perform the Services. However, any timescales we provide are a guideline only and are not of the essence of the Contract.

3. Design

3.1 The design(s) we produce will be based on the brief you have given to us. We will require your input and feedback at all stages throughout the process. Any proofs we send to you must be signed off by you in writing.

3.2 Any alterations required after approval of the final design, any changes to the brief or any additional visits required above the allowance included for in the Quotation will be chargeable at our standard rate applicable at the time.

3.3 Any copy and images you provide will be uploaded or delivered by us exactly as we receive it. It is your responsibility to check for mistakes, including spelling and grammar mistakes, and we accept no responsibility for the same.

3.4 We will use our own exclusive judgement when providing the Services and deciding upon artistic and other subjective factors. We will not accept liability, and no refunds will be offered, in the unlikely event that you are dissatisfied due to a matter of personal taste.

4. Customer’s Responsibilities

4.1 Once access to the Software is granted, it is your responsibility to ensure that all Authorised Users are over the age of 18 and use the Software and our Services in accordance with these Terms and Conditions and are accordingly notified of the same.

4.2 You will ensure that any Authorised User who leaves your employment has their access to the Software removed promptly.

4.3 You will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, shall promptly notify us. We shall be entitled to carry out quarterly audits to ensure that only Authorised Users have access to the Software.

4.4 All proprietary rights in the Software remain with us. You shall not:

4.4.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, transmit, or distribute all or any portion of the Software in any form or media or by any means;

4.4.2 attempt to reverse compile, disassemble, or reverse engineer all or any part of the Software;

4.4.3 access all or any part of the Software in order to build a product or service which competes with the Software;

4.4.4 vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software;

4.4.5 sub-license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party except the Authorised Users; or

4.4.6 attempt to obtain, or assist third parties in obtaining, access to the Software other than as provided under this clause 4.

4.5 You undertake that you will not allow or suffer any password to be used by more than one Authorised User and confirm that you will use reasonable endeavours to ensure that each Authorised User keeps their password and identification secure and confidential. You will also ensure that each password is reasonably strong and secure, containing a combination of letters, numbers and symbols, and is changed regularly, no less frequently than once every three months. You will notify us immediately of any known or suspected unauthorised use of the Software or breach of security, including loss, theft or unauthorised disclosure of password(s) or other security information.

4.6 You will not post, link to or transmit any material via the Software or during the course of the provision of our Services that:

4.6.1 is unlawful, harmful, threatening, abusive, malicious, defamatory, obscene, blasphemous, profane, infringing, harassing, racially or ethnically offensive, or otherwise objectionable in any way;

4.6.2 contains a virus or other hostile computer program;

4.6.3 facilitates illegal activity;

4.6.4 depicts sexually explicit images;

4.6.5 promotes unlawful violence;

4.6.6 is knowingly discriminatory based on race, gender, religious belief, sexual orientation, disability, or any other illegal activity;

4.6.7 infringes any patent, trade mark, design right, copyright or other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction; or

4.6.8 causes or may cause damage or injury to any person or property.

4.7 We reserve the right to remove any material which we deem inappropriate from the Software without notice. This includes, but is not limited to, material specified in clause 4.6. We also reserve the right to terminate the Contract in accordance with clause 7.2. However, it is not our responsibility to check the legality or appropriateness of material you are uploading to the Software. You own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for its legality, reliability, integrity, accuracy and quality.

4.8 You shall procure that all email is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner. You will not send bulk email, whether opt-in or otherwise, using our Services, nor will you promote any software hosted by us using bulk email.

4.9 You will not employ programs which consume excessive system resources, including but not limited to processor cycles and memory.

4.10 You will observe the procedures which we may from time to time prescribe and will make no use of our Services which could be detrimental to our other customers.

4.11 Any access to other networks connected to our Services must comply with the rules appropriate for those other networks.

4.12 The rights provided under this clause 4 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer without our written permission.

4.13 The Customer is responsible for backing up all data, including Customer Data, and we shall not be responsible for any loss, destruction, alteration or disclosure of such data.

5. Company's Responsibilities

- 5.1 We do not warrant that your use of the Software or our hosting Services will be uninterrupted or error-free; nor that the Software, and/or the information obtained by you through the Software, will meet your requirements.
- 5.2 While we will use all reasonable endeavours to ensure the integrity and security of the Services provided by us, we do not guarantee that our server(s) will be free from unauthorised users or hackers.
- 5.3 We are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data via our servers, and you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such facilities.
- 5.4 We shall be under no liability for non-receipt or misrouting of email or for any other failure of email.
- 5.5 We reserve the right to carry out maintenance at such times as may be necessary at our discretion but will give you advance notice where possible.

6. Payment

- 6.1 Unless otherwise agreed by us in writing, our payment terms are as follows:
 - 6.1.1 40% of the quoted fee is due upon acceptance of our Quotation.

Orders will not be deemed confirmed until the deposit is paid in full.
This deposit is non-refundable;
 - 6.1.2 60% of the quoted fee will be invoiced on completion of the Services.
- 6.2 Notwithstanding the above, we reserve the right to request 100% of the quoted fee up front at our sole discretion.
- 6.3 All payments are due in full in pounds sterling, without set-off, withholding or deduction, within 30 days from the date of invoice. All fees and charges are expressed exclusive of VAT (where applicable).
- 6.4 Without prejudice to any other rights or remedies we may have, should any payment not be received by the due date, we shall have the right to suspend your use of the Services and your access to the Software and reuse the domain name where applicable. Should any payment become overdue for a period of 30 days or more, we will automatically terminate the Contract and irretrievably delete your data from our servers.

7. Cancellation and Termination

- 7.1 The Services cannot be cancelled after the Contract is formed, unless agreed by us in writing. In the event of cancellation, you will be required to pay for all Services carried out by us up to the date of cancellation, which will become immediately due and payable. Upon receipt of payment, we will hand over all works completed by us under the Contract, up to the date of cancellation.
- 7.2 Either Party has the right to terminate the Services immediately if the other:
 - 7.2.1 has committed a material breach of the Contract, unless the breach is capable of remedy, in which case the right to terminate immediately will be exercisable if the other Party has failed to remedy the breach within 30 days after a written notice to do so;
 - 7.2.2 or goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation), if a receiver is appointed in respect of the whole or any part of its assets, if anything similar occurs in relation to either party, or if either party ceases or threatens to cease to carry on trading.
- 7.3 Upon termination, all payments required under the Contract shall become due and immediately payable.
- 7.4 Upon termination of the Contract for any reason, we will retain the Customer Data for a period of 30 days from the date of termination. It is the Customer's responsibility to retrieve such data if required within this timeframe. After 30 days, any such data will be securely destroyed.
- 7.5 Any and all obligations of the Parties, which either expressly or by their nature continue beyond the termination, cancellation or expiration of the Contract, shall survive termination under this clause 7 on a pro-rata basis.

8. Liability

- 8.1 Except in respect of death or personal injury caused by our negligence, we will not, by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our servants or agents or otherwise) in connection with the performance of our obligations under the Contract.
- 8.2 We cannot be held responsible for any failure or delay in providing our Services or for any costs or losses sustained or incurred by you as a result, where our failure or delay was caused by incorrect information supplied by you, a lack of information, or your failure to comply with any of your obligations detailed in these Terms and Conditions.
- 8.3 All warranties or conditions whether express or implied are hereby expressly excluded to the full extent permitted by law.
- 8.4 In the event of a breach by us of our express obligations under these Terms and Conditions, your remedies will be limited to damages, which in any event, shall not exceed the fees and expenses paid by you for the Services under the Contract.
- 8.5 You agree to indemnify us against all damages, costs, claims and expenses suffered by us arising from loss or damage caused by you, or your employees or agents, as a result of your breach or non-observance of these Terms and Conditions.

9. **Confidentiality:** Each Party undertakes that throughout the duration of the Contract, the Parties may disclose certain confidential information to each other. Both parties agree that they will not use the confidential information provided by the other, other than to perform their obligations under the Contract. Each Party will maintain the confidential information's confidentiality and will not disseminate it to any third party, unless so authorised by the other Party in writing.

10. Intellectual Property

- 10.1 Subject to a written agreement to the contrary, we retain ownership in all intellectual property which may subsist in the provision of the Services. Nothing in the Contract will vest any ownership rights in you.
- 10.2 Provided payment is made in accordance with the terms of payment above, we will grant you a non-exclusive license to use the intellectual property the subject of the Contract, only for the purposes for which we are engaged by you. The licence will become effective only once the final design has been provided and once we have received all payments under the Contract in full.
- 10.3 You may not sub-license the intellectual property rights without our prior written permission.
- 10.4 We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of such intellectual property rights.
- 10.5 The licence will apply only to the final design and will not extend to any draft concepts, images, designs or other material viewed by you. These cannot be used without our express permission. We reserve the right to reuse these designs at our discretion.
- 10.6 We reserve the right to use any design created by us in any advertising or promotional material, publications, print, or any other purpose required by us.
- 10.7 Any licence granted shall be automatically revoked if you breach any of these Terms and Conditions or if the Contract is cancelled or terminated in accordance with clause 7.
- 10.8 You warrant that any image, logo, document or instruction given to us will not cause us to infringe any advertising codes of conduct or any intellectual property or other legal rights, including any letter patent, registered design or trade mark, in the execution of our Services. You will indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in settlement of any claim for any such infringement, including infringement of stock photography copyright, which results from our use of any information supplied by you.

11. **No employment:** Nothing in the Contract will render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.

12. Assignment and Sub-Contracting

- 12.1 You may not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under these Terms and Conditions or the Contract.
- 12.2 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights or obligations under these Terms and Conditions or the Contract, without your prior consent.
- 12.3 Where we subcontract the performance of any of our obligations, we will be responsible for every act or omission of the subcontractor as if it were an act or omission of our own.

13. **Literature and Representations:** Any marketing literature we may provide is presented in good faith as a guide to represent the Services offered and does not form a part of the Contract. None of our employees or agents are authorised to make any representation concerning the Services unless confirmed by us in writing. In entering into the Contract, you acknowledge that you do not rely on and waive any claim for breach of any such representations, which are not so confirmed.

14. **Force Majeure:** Neither Party shall be liable for any failure or delay in performing their obligations under these Terms and Conditions or the Contract where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event beyond the control of the Party in question.

15. **Waiver:** The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract will constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

16. **Severance:** The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by

extension, the Contract). The remainder of these Terms and Conditions and the Contract shall be valid and enforceable.

17. Data Protection:

- 17.1 Both parties agree to comply with all applicable data protection legislation including, but not limited to, the General Data Protection Regulation 2016 ("GDPR") and any subsequent amendments thereto.
- 17.2 In order to comply with the GDPR, it is your obligation to obtain express consent from your customers for their personal data to be shared with us as a third party, where applicable to the Services. You warrant that in passing such personal data to us, consent has been obtained for us to store, use and process the personal data, solely for the provision of the Services.
- 17.3 You must send all personal data only via the secure site provided by us for this purpose. This site must not be used for any other purpose other than for the transmission of personal data.

18. Third Party Rights: No part of the Contract is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

19. Notices: Notices shall be deemed to have been duly received and properly served 24 hours after an email is sent, or three working days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that it was properly addressed to the address provided, stamped and placed in the post and in the case of an email, that it was sent to the specified email address of the addressee.

20. Law and Jurisdiction

- 20.1 These Terms and Conditions and the Contract will in all respects be subject to and construed in accordance with the laws of England and Wales.
- 20.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Contract will be referred to the exclusive jurisdiction of the courts of England and Wales.