

Your-Web-Designer.co.uk
Web Hosting Terms

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Please read these Web Hosting Terms carefully, as they set out our and your legal rights and obligations in relation to our web hosting services.

You should print a copy of these Web Hosting Terms for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our Website in future.

These Web Hosting Terms are available in the English language only.

If you have any questions or complaints about these Web Hosting Terms or our Services, please contact us by writing to Martin Granger C/o Your Web Designer, Abbey Lane, Darley Abbey, Derby DE22 1DG or by email to martin@your-web-designer.co.uk.

AGREEMENT:

1. Definitions and interpretation

1.1 In the Agreement:

“**Affiliate**” means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

“**Agreement**” means the agreement between the Company and the Customer incorporating these Web Hosting Terms and the Proposal and any amendments to it from time to time;

“**Business Day**” means any week day, other than a bank or public holiday in England;

“**Business Hours**” means between 09:00 and 17:30 on a Business Day;

“**Charges**” means the amounts payable by the Customer to the Company under or in relation to the Agreement (as set out the Proposal);

“**Company**” means ‘Your-Web-Designer.co.uk’, a trading name of ‘Your PC Medic Company Ltd.’ incorporated in England and Wales (registration number 5677761) having its registered office at Abbey Lane, Darley Abbey, Derby DE22 1DG;

“**Confidential Information**” means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as “confidential”, described as “confidential” or reasonably understood to be confidential; and

“**Control**” means the legal power to control (directly or indirectly) the management of an entity (and “**Controlled**” will be construed accordingly);

“**Customer**” means the customer for Services under the Agreement specified in the relevant Registration Form;

“**Delivery Date**” means the date of delivery of the Website and Hosting;

“**Effective Date**” means the date when the Company receives from the Customer its signed confirmation that the Agreement is agreed, following the Customer's acceptance of the Proposal and these Web Hosting Terms;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Minimum Term" means the period of 1 Year starting on the Effective Date;

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Prohibited Content" means:

- (a) material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party rights, or may give rise to any form of legal action against the Company or the Customer or any third party;
- (b) pornographic or lewd material;
- (c) messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail;

"Proposal" means the Quote Proposal document issued by the Company detailing the scope of the Services and other matters relating to the Agreement;

"Resources" means the resources specified on the proposal;

"Services" means the services detailed in Clause 4;

"Term" means the term of the Agreement;

"Website" means the Customer's website using the Services; and

"Year" means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Delivery Date or on any anniversary of the Delivery Date.

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

- 1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

2. This Agreement

- 2.1 This Agreement will come into force on the Delivery Date
- 2.2 This Agreement will continue in force indefinitely, unless and until terminated in accordance with Clause 13.

3. Transition and implementation

- 3.1 At the request of the Customer, the Company will transfer the Website from its development servers or use reasonable endeavours to assist with the transition of the Website from / to any third party host.

4. Services

- 4.1 From the Delivery Date, the Company will host the Website in the manner specified on the Proposal, and will make available the Resources for this purpose.
- 4.2 The Company may suspend some or all of the Services in order to carry out scheduled maintenance or repairs. Subject to this, the Company will use its best endeavours to maintain the Website availability.
- 4.3 The Company may make available to the Customer the ability to update or amend the Website.
- 4.4 The Company will upon request provide POP3 and webmail email services to the Customer. All mailboxes will be protected by anti-spam and anti-virus software. If the Customer or a mailbox exceeds the relevant storage limit notified by the Company to the Customer from time to time, the Company may delete stored emails to bring the Customer or mailbox within the storage limit.
- 4.5 The Company will make available, on Business Days between the hours of 9.00 am and 5.00 pm (London time), a telephone helpdesk facility for the purpose of providing support to customers.
- 4.6 The Company will make back-up of the Customer's Website, and will retain such back-up.

5. Customer Responsibilities

- 5.1 The Customer will provide the Company with all co-operation, information and documentation reasonably required for the implementation and hosting of the Website and the provision of the other Services, and the Customer will be responsible for procuring any third party co-operation reasonably required for the implementation and hosting of the Website and the provision of the other Services.
- 5.2 The Services are provided to the Customer only, and the Customer may not resell the Services to any third party.
- 5.3 The Customer will be responsible for obtaining suitable licences of third party software (such as email client software) which are required for the full use of the

Services.

- 5.4 It is the Customer's responsibility to keep any passwords relating to the Services confidential, and to change such passwords on a regular basis. The Customer will notify the Company immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.

6. Acceptable Use

- 6.1 The Customer must not use the Website or any of the Services:
- (a) to host, store, send, relay or process any Prohibited Content;
 - (b) for any purpose which is unlawful, fraudulent, or infringes any third party rights;
 - (c) in any way which may put the Company in breach of a contractual or other obligation owed by the Company to any internet service provider.
- 6.2 The Company reserves the right to remove content from the Website where it reasonably suspects such content is Prohibited Content.
- 6.3 The Website's utilisation of Resources must not exceed the limits set out on the Proposal. If the Website's utilisation of Resources exceeds those limits, the parties will endeavour to agree a variation to the Agreement. If the parties cannot agree such a variation within a reasonable period (being not more than 30 days) following notice from the Company to the Customer requesting such variation, and Resource utilisation continues to exceed those limits, the Customer will be deemed to be in material breach of the Agreement for the purposes of Clause 13.
- 6.4 The Customer acknowledges that the Company does not purport to monitor the content of the Website or the use of the Services.
- 6.5 Where the Company reasonably suspects that there has been a breach of the provisions of this Clause 6, the Company may suspend any or all of the Services and/or the Customer's access to any or all Services while it investigates the matter.
- 6.6 Subject to Clause 6.3, any breach by the Customer of this Clause 6 will be deemed to be a material breach of the Agreement for the purposes of Clause 13.
- 6.7 The Customer will indemnify the Company against all damages, losses and expenses arising as a result of any breach by the Customer of this Clause 6.

7 Charges and payment

- 7.1 The Company will issue invoices for the Charges to the Customer yearly (from the Delivery Date) during the Term
- 7.2 The Customer will pay the Charges to the Company within 30 days of the date of receipt of an invoice issued in accordance with Clause 7.1.
- 7.3 All Charges stated in or in relation to the Agreement are stated inclusive of VAT, unless the context requires otherwise.
- 7.4 Charges must be paid by cash, bank transfer or by cheque (using such payment

details as are notified by the Company to the Customer from time to time).

- 7.5 If the Customer does not pay any amount properly due to the Company under or in connection with the Agreement, the Company may:
- (a) charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

8 Warranties

- 8.1 The Customer warrants to the Company that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 8.2 The Company warrants to the Customer:
- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
 - (b) that it will perform its obligations under the Agreement with reasonable care and skill.
- 8.3 All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

9 Liability

- 9.1 Nothing in the Agreement will exclude or limit the liability of either party for:
- (a) death or personal injury caused by that party's negligence;
 - (b) fraud or fraudulent misrepresentation on the part of that party; or
 - (c) any other liability which may not be excluded or limited under applicable law.
- 9.2 Subject to Clause 9.1, the Company's liability to the Customer under or in connection with the Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:
- (a) the Company will not be liable for any:
 - (i) loss of profits, income or anticipated savings,
 - (ii) loss or corruption of any data, database or software,
 - (iii) reputational damage or damage to goodwill;
 - (iv) loss of any commercial opportunity, or

- (v) indirect, special or consequential loss or damage;
- (b) the Company will not be liable for any losses arising out of a Force Majeure Event; and
- (c) the Company's liability in relation to any event or series of related events will in no circumstances exceed the total amount paid (or, if greater, payable) by the Customer to the Company under the Agreement during the preceding 12 month period.

10. Data protection

10.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under the Agreement, and that the processing of that Personal Data by the Company for the purposes of and in accordance with the terms of the Agreement will not breach any applicable laws (including the Data Protection Act 1998).

10.2 The Company warrants that:

- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Company on behalf of the Customer; and
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Company on behalf of the Customer.

11. Confidentiality

11.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause 11.

11.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.

11.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.

11.4 These obligations of confidentiality will not apply to Confidential Information that:

- (a) has been published or is known to the public (other than as a result of a breach of the Agreement);
- (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
- (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

12. Publicity

Neither party will make any public disclosure relating to the Agreement (including

press releases, public announcements and marketing materials) without the prior written consent of the other party, not to be unreasonably withheld or delayed.

13. Termination

13.1 Either party may terminate the Agreement at any time by giving 30 days' written notice to the other party.

13.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

- (a) commits any material breach of any term of the Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or

[(b) persistently breaches the terms of the Agreement.

13.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement);
- (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

14. Effects of termination

14.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6.7, 7.5, 8, 9, 10, 11, 14 and 15.3 to 15.12.

14.2 Termination of the Agreement will not affect either party's accrued rights

(including accrued rights to be paid) as at the date of termination.

- 14.3 If the Agreement is terminated under Clause 13.1, or by the Customer under Clause 13.2 or 13.3 (but not in any other case):
- (a) the Company will promptly provide to the Customer an electronic copy of the Website;
 - (b) the Company will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Website to the Customer or another service provider, subject to payment of the Company's reasonable expenses; and
 - (c) the Customer will be entitled to a refund of any Charges paid by the Customer to the Company in respect of any Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Company (such amount to be calculated by the Company using any reasonable methodology).
- 14.4 Save as provided in Clause 14.3(c), the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to the Company.

15. General

- 15.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by pre-paid first class post, or sent by fax or email, for the attention of the relevant person, and to the relevant address, fax number or email address given below (or as notified by one party to the other in accordance with this Clause).

The Company
Your Web Designer,
Abbey Lane
Darley Abbey
Derby
DE22 1DG
Tel: 07810 332 056
Email: martin@your-web-designer.co.uk

The Customer
The addressee, address, fax, and email address specified in the Proposal.

- 15.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice sent by first class post, 48 hours after posting; and
 - (c) where the notice sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).
- 15.3 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

- 15.4 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 15.5 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 15.6 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 15.7 Either party may freely assign its rights and obligations under the Agreement without the other party's consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 15.8 The Company may subcontract any of its obligations under the Agreement to any third party.
- 15.9 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 15.10 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 15.11 The Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of the Agreement. Subject to Clause 9.1, each party acknowledges that no representations or promises not expressly contained in the Agreement have been made by or on behalf of the other party.
- 15.12 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.