



**Access by Design**

**Web Hosting Terms**

**Effective from Sept 1<sup>st</sup> 2016**

## Web Hosting Terms

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: Access by Design Websites Ltd, Miracle, Church Lane, Birdham, Chichester, PO20 7AT or by email to [info@accessbydesign.uk](mailto:info@accessbydesign.uk).

### AGREEMENT:

#### 1. Definitions and interpretation

##### 1.1 In the Agreement:

**"Agreement"** means the agreement between Access by Design and you incorporating these Web Hosting Terms and the schedule 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 16:30 on a Business Day;

**"Charges"** means the amounts payable by you to Access by Design under or in relation to the Agreement (as set out on the Quotation / Schedule);

**"Company"** means Access by Design Websites Ltd, Miracle, Church Lane, Birdham, Chichester, West Sussex, PO20 7AT;

**"Confidential Information"** means:

(a) 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

(b) any fees for hosting, email accounts and additional facilities on the server.

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

**"Customer Works"** means the works and materials provided to the Developer by you, or by any third party acting for or on behalf of you, for incorporation into the Website

**"Design Elements"** means the visual appearance of the Website (including page layouts, artwork, photographs, logos, graphics, animations, video works and text comprised in the Website) together with all mark-ups and style sheets comprised in or generated by the Website, but excluding:

- (a) your Works; and
- (b) the Third Party Works;

**"Effective Date"** means the date when the Agreement comes into force in accordance with Clause [2.3];

**"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);

**"Implementation Date"** means the date specified as such [on the Registration Form];

**"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 12 months 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 Access by Design or you 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;

**"Registration Form"** means the form on Access by Design's website enabling users to sign up as Customers;

**"Resources"** means the resources specified on the Schedule;

**"Services"** means the services detailed in Clause [4];

**"Term"** means the term of the Agreement;

**"Website"** means your 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 Effective Date or on any anniversary of the Effective 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 In order to apply to become a Customer, the applicant must complete and submit the Registration Form, or have their details entered for them after paying the initial deposit on a web development contract.
- 2.2 If the applicant makes any input errors during the order process, these may be identified and corrected by the applicant before the Registration Form is submitted by you.
- 2.3 This Agreement will come into force if and when Access by Design sends to you an acceptance email, following the submission of a completed Registration Form by you, (or on your behalf by the client) and following any payments as laid out in the quotation / schedule.
- 2.4 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 you, Access by Design will transfer the Website from its development servers or use reasonable endeavours to assist with the transition of the Website from any third party host.
- 3.2 Access by Design will implement the hosting of the original Website on or before the Implementation Date or, where Access by Design does not hold a copy of the Website at least 5 Business Days before the Implementation Date, within 5 Business Days after the date of receipt of a copy of the Website.
- 3.3 Within 5 Business Days following the Implementation Date (or, if later, the actual date of implementation of the hosting of the Website), you will comprehensively test the hosting of the Website and will inform Access by Design of the results of those tests.

## **4. Services**

- 4.1 From the date of actual implementation, Access by Design will host the Website in the manner specified, and will make available the Resources for this purpose.
- 4.2 Access by Design may suspend some or all of the Services in order to carry out scheduled maintenance or repairs. Subject to this, Access by Design will use its

best endeavours to maintain the Website availability level specified on the Quotation / Schedule.

- 4.3 Access by Design will make available to you the ability to update or amend the Website, if it has been designed by Access by Design.
- 4.4 Access by Design will upon request provide POP3 and webmail email services to you. All mailboxes will be protected by anti-spam and anti-virus software, although the client is strongly advised to have their own antivirus software at the end. If you or a mailbox exceeds the relevant storage limit notified by Access by Design to you from time to time, Access by Design may delete stored emails to bring you or mailbox within the storage limit.
- 4.5 Access by Design will make available, on Business Days between the hours of 10.00 am and 4.00 pm (London time), a helpdesk facility for the purpose of providing support to customers with regard to the hosting provision. This will take the form of a ticketing system which the client will be able to use from anywhere they have internet access. The response time cannot be guaranteed but Access by Design will endeavour to answer queries as speedily as possible.
- 4.6 Access by Design will make back-ups of your Website on a daily, weekly and monthly basis, and will retain such back-ups until they are overwritten by the next scheduled backup. However there is no guarantee that you will not lose data after reasonable duration of the agreement. Note there is no charge for the backups themselves but there will be a charge for restoring data from a backup of £50 plus VAT.
- 4.7 At least once every 4 weeks, Access by Design will arrange for the off-site storage of a current back-up of your Website (which will be over-written on the following off-site back-up date)
- 4.8 Access by Design may also make back-ups of your email messages; however, Access by Design will not make back-ups of email messages which have been downloaded by you. It is your responsibility to keep information up to date and notify Access by Design of any changes or concerns.

## **5. Customer Responsibilities**

- 5.1 You will provide Access by Design 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 you 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 you only, and you may not resell the Services to any third party.
- 5.3 You 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 your responsibility to keep any passwords relating to the Services confidential, and to change such passwords on a regular basis. You will notify Access by Design 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 You 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 Access by Design in breach of a contractual or other obligation owed by Access by Design to any internet service provider.
- 6.2 Access by Design 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 Hosting Invoice. 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 Access by Design to you requesting such variation, and Resource utilisation continues to exceed those limits, you will be deemed to be in material breach of the Agreement for the purposes of Clause [13].
- 6.4 You acknowledges that Access by Design does not purport to monitor the content of the Website or the use of the Services.
- 6.5 Where Access by Design reasonably suspects that there has been a breach of the provisions of this Clause [6], Access by Design may suspend any or all of the Services and/or your access to any or all Services while it investigates the matter.
- 6.6 Subject to Clause [6.3], any breach by you of this Clause [6] will be deemed to be a material breach of the Agreement for the purposes of Clause [13].
- 6.7 You will indemnify Access by Design against all damages, losses and expenses arising as a result of any breach by you of this Clause [6].

## **7 Charges and payment**

- 7.1 Access by Design will issue invoices for the Charges to you annually, in advance of the initial hosting start date.
- 7.2 You will pay the Charges to Access by Design within 14 days of the date of receipt of an invoice issued in accordance with Clause [7.1] and in any event in advance of the period of Services to which the Charges relate.
- 7.3 There will be a late payment penalty fee of £35 which will be charged in addition to any interest outlined in Clause 7.6(a).
- 7.4 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise. The hosting charges will never increase beyond the Retail Price Index as applied to the original hosting costs.
- 7.5 Charges must be paid by either bank transfer or by cheque
- 7.6 If you does not pay any amount properly due to Access by Design under or in connection with the Agreement, Access by Design may:

- (a) charge you interest on the overdue amount at the rate of 5% per year above the base rate of Nat West 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 you pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

## **8 Warranties**

- 8.1 You warrants to Access by Design that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 8.2 Access by Design warrants to you:
  - (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.
  - (d) Access by Design do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge upon agreement that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Confidential Information and property.
- 9.2 Subject to Clause [9.1], Access by Design's liability to you under or in connection with the Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:
  - (a) Access by Design will not be liable for any:
    - (i) loss of profits, income or anticipated savings,
    - (ii) loss or corruption of any data, database or software, You are therefore responsible to take all reasonable steps to mitigate the risks inherent in the provision of the Services, including data loss,
    - (iii) reputational damage or damage to goodwill;

- (iv) loss of any commercial opportunity, or
- (v) indirect, special or consequential loss or damage;
- (b) Access by Design will not be liable for any losses arising out of a Force Majeure Event; and
- (c) Access by Design'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 you to Access by Design under the Agreement during the preceding 12 month period].

## **10. Data protection**

- 10.1 You warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to Access by Design under the Agreement, and that the processing of that Personal Data by Access by Design 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 Access by Design warrants that:
- (a) it will act only on instructions from you in relation to the processing of any Personal Data performed by Access by Design on behalf of you; 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 Access by Design on behalf of you.

## **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 after the 12 month Minimum Term by giving at least 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 You may terminate the Agreement immediately by giving written notice to Access by Design if:
- (a) Access by Design:
    - (i) materially fail to provide the Services as agreed and do not remedy that failure within ten (10) days of your written notice describing the failure
    - (ii) materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.
  - (b) (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 you under Clause [13.2] or [13.3] (but not in any other case):
- (a) Access by Design will provide to you a static version of the Website within 7 days of the effective date of termination;
  - (b) Access by Design will provide such assistance as is reasonably requested by you to transfer the hosting of the Website to you or another service provider, subject to payment of Access by Design's reasonable expenses;

and

- 14.4 You will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to Access by Design.

## **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 or email address given below (or as notified by one party to the other in accordance with this Clause).

Access by Design Websites Ltd  
Miracle, Church Lane, Birdham, Chichester, PO20 7AT  
Email: info@accessbydesign.uk

- 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 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 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 Access by Design 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.