

Definitions

In this Contract, unless the context otherwise requires:

- "Service" means the compilation and hosting of a website, email and any other service or facility provided by us to you.
- "Server" means the computer server equipment operated by us or our agent in connection with the provision of the Services.
- "Website" means the area on the Server allocated by us to you for use by you as a site on the Internet.
- "Contract" means the Contract between Devansoft and the User
- "User" means you the customer or any person who makes use of the services through you or on your behalf.

1. Web Hosting

- a) We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss or damage to any data stored on the Server.
- b) You represent, undertake and warrant to us that you will use the website allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that;
 - you will not use the Server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so
 - You will not post, link to or transmit:
 - any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way.
 - any material containing a virus or other hostile computer program.
 - Any material which constitutes or encourages the commission of a criminal offence or, which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person, which may subsist under the laws of any jurisdiction.
- c) You shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account, breach of security, including loss, theft or unauthorised disclosure of your password or other security information.
- d) In the case of an individual User, you warrant that you are at least 18 years of age and if the User is a company, you warrant that the Services will not be used by anyone under the age of 18 years.
- e) While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers and we shall be under no liability for non-receipt or mis-routing of email or for any other failure of email.

2. Domain Name Registration

- a) We make no representation that the domain name you wish to register is capable of being registered by or for you or that it will be registered in your name. You should therefore not assume registration of your requested domain name(s) until you have been notified that it has or they have been registered. Any action taken by you before such notification is at your risk.
- b) The registration and use of your domain name is subject to the terms and conditions of use applied by the relevant naming authority. You shall ensure that you are aware of those terms and conditions and that you comply with them. You shall have no right to bring any claim against us in respect of refusal to register a domain name or cancellation of the domain name by the relevant naming authority.
- c) We shall have no liability in respect of the use by you of any domain name. Any dispute between you and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, we shall be entitled, at our discretion and without giving any reason, to withhold, suspend or cancel the domain name. We shall also be entitled to make representations to the relevant naming authority, but will not be obliged to take part in any such dispute.
- d) We give no warranty that your domain name is or will continue to be available for your use or that no domain name is or will be registered which conflicts with your domain name or which otherwise affects your use of your domain name.
- e) We shall not release any domain to another provider unless full payment for that domain has been received by us.

3. Devansoft Service

- a) Devansoft will use all reasonable endeavours to adhere to any dates proposed of Service, however any such date is to be treated as an estimate only and Devansoft accepts no liability for failure to meet such dates.
- b) Devansoft will use all reasonable endeavours to provide a reliable Service, however it is not practical to provide such a Service free of faults and Devansoft does not undertake to do so. In the event of a fault in Service, you must report the fault by telephone or electronic mail to Devansoft. Upon receipt of the fault report, Devansoft will take all proper steps without undue delay to correct the fault. Devansoft shall not, in any event, be liable for interruptions of Service or downtime of a Server.
- c) Devansoft may:
 - Temporarily suspend for the purpose of repair, maintenance or improvement, part or all of Devansoft's service, generally without notice.
 - Give or update instructions regarding the use of the Service which in Devansoft's reasonable opinion is necessary in the interests of safety, or to maintain or improve the quality of Service to Devansoft's customers and any such instructions shall whilst they are in force, be deemed to form part of this Contract.
 - Vary the technical specification of Service for operational reasons. Devansoft undertakes to use reasonable endeavours to restore Service as soon as practically after any such suspension.

4. Content and Misuse

- a) You will use all reasonable endeavours to ensure that the Devansoft Service is used or includes content and conforms to the laws of this country and will not knowingly permit any illegal use or such use that will bring Devansoft into disrepute.
- b) You must not, nor must any other person, use the service to:
 - send or receive any material which is offensive, abusive, indecent, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights.
 - To cause annoyance, inconvenience or needless anxiety.
- c) Devansoft may discontinue Service if after due warning the User continues to permit such illegal or disreputable use. If Devansoft suspends service for contravention of the above conditions of this clause, Devansoft can refuse to restore Service until it receives an acceptable assurance from the User that there will be no further contravention.

5. Charges & Payment

- a) If your cheque is returned by the bank as unpaid for any reason, you will be liable for a "returned cheque" charge of £25.
- b) All charges payable by you for the Services shall be in accordance with the scale of charges and rates published from time to time by us on our website and shall be due and payable in advance of our service provision.
- c) All payments unless otherwise agreed are payable in advance. Devansoft agrees to be party to this Contract upon Devansoft's acceptance of cleared funds covering first invoice. If payment is not received on or before the due date Devansoft reserves the right to immediately withdraw, suspend or limit service.
- d) Devansoft will automatically take payment for the renewal of the service using your specified payment method unless the contract is terminated by you giving at least 30 days.
- e) Devansoft will automatically take payment for the renewal of the service using your specified payment method unless the contract is terminated by you giving at least 30 days notice.
- f) Without prejudice to our other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, we shall be entitled forthwith to suspend the provision of Services to you.

6. Default

- a) If you do not pay the charges in accordance with the provisions of clause 6 of this Contract, or break this Contract in any other way, or are subject to bankruptcy or insolvency proceedings, Devansoft can (without prejudicing, losing or reducing any other right or remedy):
 - suspend services, including partially, temporarily without notice, albeit the User remains liable to pay rental during the suspension
 - or terminate this Contract by immediate notice, without prejudice to Devansoft's pre-existing rights.
- b) Bankruptcy or insolvency proceeding means bankruptcy proceedings or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress, diligence or seizure; or if the User is a company,

being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.

- c) You continue to be liable for all charges which are due for Service during any period in which you do not comply with this Contract.
- d) On termination of this Agreement or suspension of the Services, we shall be entitled immediately to block your website and to remove all data located on it. We shall be entitled to delete all such data but we may, at our discretion, hold such data for such period as we may decide to allow you to collect it at your expense, subject to payment in full of any amounts withstanding and payable to us. We shall further be entitled to post such notice in respect of the non-availability of your website as we think fit.
- e) If Devansoft waives a breach of Contract by you, that waiver is limited to the particular breach. Any delay by Devansoft in acting upon a breach is not to be regarded in itself as a waiver.

7. Termination of Service

- a) This Contract may be terminated by either party on giving at least 30 days notice. If Devansoft gives you notice you shall pay all charges up to the expiry of the notice. If you give notice, you shall pay all charges until 30 days after the date Devansoft receives the notice or until expiry of the notice, whichever is the latter. Your notice does not avoid any other liability for Service already provided.
- b) Devansoft reserves the right to terminate this Contract by giving to you not less than 30 days prior written notice of termination.

8. Notices

- a) Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this Agreement or such other address as such party may from time to time have communicated to the other in writing. If sent by email, unless the contrary is proved to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

9. Matters Beyond Devansoft's Reasonable Control

- a) Devansoft is not liable for any breach of this Contract or liable for any delay or failure in performance of any part of these conditions and its commitments when caused as a result of Force Majeur, war, civil disorder, industrial disputes, inclement weather, acts of local or central government or other competent authorities and failure by other service providers.

10. Liability

- a) You acknowledge that Devansoft has no control over the information transmitted via the Service and that Devansoft does not examine the use to which you put the service or the nature of the information you are sending or receiving. Devansoft hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.
- b) Devansoft undertakes no liability whatsoever for the acts or omissions of other providers of telecommunication service or for faults in or failures of their apparatus.
- c) Devansoft is not in any way liable in Contract or otherwise for loss whether direct or indirect of business, revenue or profit, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.
- d) Devansoft makes no warranty as regards to its services or equipment and will not be responsible for any damage allegedly suffered or claimed by you for any reason including but not limited to loss of data, wrong or non deliveries and service interruptions.
- e) All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions, including without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to sub-clause 10.6.
- f) Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.
- g) Our total aggregate liability to you for any claim in Contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services, which are the subject of any such claim.
- h) In any event no claim shall be brought unless you have notified us of the claim within one year of it arising.

11. Indemnity

- a) You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses) however suffered or incurred by us in consequences of your breach or non-observance of this Agreement

12. Intellectual Property Rights

- a) The copyright of the work commissioned by you shall be retained by Devansoft.
- b) Nothing in this agreement shall prevent Devansoft from using or exploiting the work or any part of it in any medium or for any purpose provided that no use will be made of your visuals and that such exploitation will not be detrimental to your business.

13. Ownership of the work

- a) Devansoft shall retain ownership of all the work (including proofs and other materials except client's images) delivered to you.

14. Credits/Moral Rights

- a) You shall ensure Devansoft is credited in any use of the unmodified work. Devansoft reserves the right to be credited in any use of the modified work.

15. Law

- a) This Agreement shall be governed by and construed in accordance with English law and you hereby submit to the non-exclusive jurisdiction of the English courts.

16. Entire Agreement

- a) These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.