

# STANDARD TERMS & CONDITIONS OF BUSINESS

## DEFINITIONS

### *Agreement*

These terms and conditions, together with the Schedule, Web Order or accepted Quotation.

### *Charges*

The charges for the Services as set out in the Agreement documents.

### *Client (You, Your)*

The company, firm, organisation, person, persons, corporation, or public authority using any of HA Hosting's services, including their successors or personal representatives.

### *Commencement Date*

This is the date set out, and as agreed in the Agreement when services will commence. Commencement date begins on the date of service delivery or 14 days after the order unless otherwise agreed.

### *Equipment*

Any equipment, parts, spares, or other hardware as identified in the Agreement.

### *Initial Term*

A period commencing on the Commencement Date and continuing for the period set out in the Agreement.

### *HA Hosting*

High Availability Hosting Limited.

### *Intellectual Property*

Any patent, invention, copyright, database right, registered or unregistered design, trademark (whether registered or unregistered), trade name, logo, trade secrets, know-how or other industrial or intellectual property right subsisting anywhere in the world, and applications for any of the foregoing, together with the goodwill thereon.

### *Instruction*

The order from the Client for the Services.

### *Service(s)*

The work undertaken, or service provided by HA Hosting as set out in the Agreement.

### *Support*

Provision by HA Hosting of one or more of the Services detailed in the Service Agreement document.

### *Term*

The Initial Term together with any successive periods agreed between the parties.

### *Working Days*

Monday to Friday, excluding English Public Holidays.

### *Writing*

Includes any written paper document, and any email or other messaging correspondence.

## 1. CONDITIONS

- 1.1. Unless otherwise stated in writing, all orders are accepted subject to these terms and conditions as stated herein and the Client, by authorising or allowing work to proceed, is deemed to have acknowledged this fact.
- 1.2. Where the services or products being supplied by HA Hosting require a separate Agreement to be signed, said agreement should be read in conjunction with these Terms & Conditions. If there is any conflict between the Agreement and these terms and conditions, the provisions of the Agreement shall prevail.
- 1.3. No variation to these terms and conditions shall be binding unless agreed in Writing between the authorised representatives of HA Hosting and the Client.
- 1.4. HA Hosting's employees, agents or sub-contractors are not authorised to make any representations concerning the Instruction or any other aspect of this Agreement unless such authority is confirmed by HA Hosting in advance and in Writing. In entering into the Agreement, the Client acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.
- 1.5. HA Hosting shall not unreasonably refuse to provide any additional services requested by the Client, subject to agreement between the parties as to the applicable terms and conditions, including charges.

## 2. CLIENT OBLIGATIONS

- 2.1. The Client shall co-operate with HA Hosting in all matters relating to the provision of the Services and, without prejudice to the foregoing generality, shall ensure that HA Hosting is provided in good time with all information, decisions and/or approvals which HA Hosting requires for provision of the Services and shall provide any additional assistance which HA Hosting may reasonably request.
- 2.2. HA Hosting must be kept informed of any upgrades or third parties updating systems or software that may affect the Services provided.
- 2.3. If HA Hosting's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Client or any of its officers, employees, agents or sub-contractors, HA Hosting shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

### 3. TERM, DURATION AND TERMINATION

- 3.1. Where services are accepted in Agreements, any termination clauses stipulated in such Agreements shall prevail. Otherwise, the termination clauses here apply.
- 3.2. A party ('the Initiating Party') may terminate this Agreement with immediate effect by written notice to the other party ('the Breaching Party') on or at any time after the occurrence of one or more of the following events:

#### 3.3. TERM/TERMINATION

- 3.3.1. Where the Term/Initial Term of this Agreement runs for a period of 12 months from the date of commencement, it shall renew automatically on a rolling 90 days' basis until either; a) it is renewed for a further 12 months or b) the Agreement is terminated by either party by providing written notice of Termination at least 90 days prior to the end of the Initial Term.
- 3.3.2. Where the Term/Initial Term of this Agreement runs for a period of 3 months from the date of commencement, it shall renew automatically on a rolling 3 month basis until terminated by either party by providing a minimum of 90 days written notice of Termination, at any time during the Agreement period.
- 3.3.3. Where the Term/Initial Term of this Agreement runs for a period of 1 months from the date of commencement, it shall renew automatically on a rolling 1 month basis until terminated by either party by providing a minimum of 30 days written notice of Termination, at any time during the Agreement period.

#### 3.4. MATERIAL BREACH

- 3.4.1. Either party may terminate this Agreement for the other's material breach of Agreement, but only after the breaching party is given 30 days' written notice of the material breach by the other party and is allowed an opportunity to cure the material breach within such time period.
- 3.4.2. If the breach is curable and resolved within 30 days following such notice, the Agreement will continue in full force and effect.
- 3.4.3. In the event the breaching party does not resolve a curable breach, or if the breach is deemed non-curable, then this Agreement will terminate upon the expiration of the 30 days.
- 3.4.4. Upon termination of this Agreement the client shall be responsible for the timely removal of any devices held within HA Holding's Data Centres, and in any event by the end of the period covered by the final invoice.
- 3.4.5. Where and Agreement is Terminated and client equipment is not removed by the end of the notice period, HA Hosting reserve the right to continue charging at the same monthly rate until such times as all equipment is removed.

#### 3.5. ADMINISTRATION

- 3.5.1. The making of an administration order in relation to the Client or the appointment of a Receiver over, or an encumbrancer taking possession of or selling any asset of, the Client.
- 3.5.2. The Client making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.
- 3.5.3. Should the Client be subject to any of the above sub-clauses, then any equipment held by HA Hosting for any reason, may be retained against monies owed to HA Hosting.
- 3.5.4. On termination of the Agreement for any reason:

- 3.5.5. The Client shall immediately pay to HA Hosting all outstanding unpaid and uncredited invoices and interest, in respect of Services provided, but for which no invoice has been submitted and HA Hosting may submit an invoice which shall be payable immediately on receipt; and
- 3.5.6. If delivery of the service has been effected, the invoice shall immediately become due and payable by the Client and if delivery had not been so effected then HA Hosting may, as its option, terminate the Agreement or cancel or suspend delivery.
- 3.5.7. The accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

## 4. CHANGES

- 4.1. If the Client wishes to change any aspect of the Services provided, it will notify HA Hosting in Writing and we will advise whether it is possible to implement the change and the effects (if any) on performance, cost and any other matters. If the Client requires the change to be implemented, the parties shall negotiate in good faith the increase or decrease, if any, to the Charges arising directly from the implementation of the change.
- 4.2. Agreed changes shall be documented by way of a change order in Writing or addendum executed by the Parties.

## 5. NO WAIVER

- 5.1. Failure or delay by either party in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any waiver by a party of any breach of, or any default under, any provision of the Agreement by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.

## 6. FORCE MAJEURE

- 6.1. Neither party shall be liable for any breach of these terms caused by matters beyond their reasonable control, including but not limited to, Acts of God, fire, lightning, explosion, war, disorder, flood, industrial dispute (whether or not involving HA Hosting employees), failures or interruptions of water supplies, weather of exceptional severity or acts of local or central government or other authorities.

## 7. SEVERABILITY

- 7.1. If any provision of this Agreement is found by any court, tribunal, or administrative body of competent jurisdiction, to be wholly or partly illegal, invalid, void, voidable, unenforceable, or unreasonable, it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable, and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.

## 8. DISPUTES

- 8.1. Satisfaction with the quality of the Services provided is of paramount importance to HA Hosting. If at any time you, as the Client, would like to discuss with us how our service could be improved, or if you as the Client are dissatisfied with the service being received, please let us know by telephoning **0114 228 0022** or emailing us on [support@hahosting.com](mailto:support@hahosting.com).
- 8.2. HA Hosting undertakes to investigate any complaint carefully and promptly and to do all we can to explain and or resolve the circumstances. If You feel that we have given you a less than satisfactory service, we undertake to do everything reasonable to address your concerns. Should matters not be resolved to your satisfaction and any dispute arises in connection with the Agreement, parties shall attempt to settle it by Mediation.
- 8.3. Should you as a client have a query or concern regarding a specific Service which we have provided, this must be notified to us within 5 days of receipt by you, of the Service using the above telephone or email contact details, failing which we reserve the right to regard any subsequent Service provided by us as a new requirement and to charge accordingly.

## 9. CONFIDENTIALITY

- 9.1. HA Hosting and the Client shall keep confidential all information of the other party, whether designated as confidential or not, obtained under or in connection with the Agreement and shall not divulge the same to any third party without consent of the other party in Writing. The provisions of this clause shall not apply to any information in the public domain otherwise than by breach of the Agreement, or information obtained from a third party who is free to divulge the same.
- 9.2. HA Hosting may refer to the Agreement or to the fact that the Client is HA Hosting's Client with the prior consent of the Client which shall not be unreasonably withheld.

## 10. INTELLECTUAL PROPERTY

- 10.1. Unless expressly provided in this Agreement, each party agrees that it neither has nor will obtain any rights in or to any of the other party's Intellectual Property Rights or confidential information.
- 10.2. In the event that HA Hosting shall supply any items, or other materials in the course of providing the Service, all Intellectual Property Rights shall vest in HA Hosting unless otherwise agreed in Writing by the parties prior to the date of supply.
- 10.3. The Client agrees that all intellectual property rights and any work developed by HA Hosting during the provision of this Agreement will vest in us.
- 10.4. Each party undertakes that it will keep and procure to be kept secret and confidential all information belonging to the other party, disclosed or obtained because of the relationship of the parties under this agreement and will not use nor disclose the same, except for the purposes of the proper performance of this agreement or with the prior written consent of the other party.
- 10.5. Where disclosure is made to any employee, consultant, or agent, it is subject to obligations equivalent to those set out in this agreement and each party agrees to use all reasonable endeavours to procure that any such employee, consultant or agent complies with such obligations, provided that each party will continue to be

responsible to the other party in respect of any disclosure or use of such confidential information by a person to whom disclosure is made.

- 10.6. HA Hosting is fully compliant with the General Data Protection Act especially in relation to obtaining consents and providing personal health information of employees and service users in any Client service provision.

## 11. INDEMNITY

- 11.1. The Client hereby indemnifies and holds harmless HA Hosting against all claims, demands, losses, damages, costs, or expenses howsoever arising, incurred by HA Hosting in connection with the Agreement as a result of a breach by the Client of any provision of this Agreement, law or regulation and/or as a result of any third-party legal action or threatened action.

## 12. LIABILITY

- 12.1. Notwithstanding any other provision in this agreement, HA Hosting's liability to the Client for death or injury resulting from the Client's own negligence or that of the Client's employees, agents or sub-contractors shall not be limited.
- 12.2. HA Hosting shall not be liable to the Client for any indirect or consequential loss the Client may suffer, even if the loss is reasonably foreseeable or HA Hosting has been advised of the possibility of the Client incurring it.
- 12.3. HA Hosting shall not be liable for any loss or damage sustained or incurred by the Client or any third party (including, without limitation, any loss of use of the Client's programs or data resulting from any breakdown of, or fault in the Maintained Products, unless such breakdown or fault is caused by the negligence or wilful misconduct of HA Hosting, its employees, agents or sub-contractors, with such loss being limited to the extent not excluded by the Agreement.
- 12.4. Without prejudice to the foregoing generalities, HA Hosting will not be held responsible for any losses arising from the supply by the Client or others of incorrect or incomplete information, or the Client's or others' failure to supply any appropriate information or the Client's failure to act on HA Hosting's advice or respond promptly to communications from HA Hosting.

## 13. PRIVACY & DATA PROTECTION

- 13.1. Both parties shall observe all their obligations under The Data Protection Regulation or General Data Protection Regulation (GDPR) as prescribed under The Data Protection Act 2018 and relating to the protection and processing of personal data.
- 13.2. The parties acknowledge that information about individuals which may be derived from the work carried out by HA Hosting may constitute Personal Data in terms of the Act. In processing such personal data, HA Hosting is a data processor in terms of the Act and such processing is at the behest of and under the direction of the Client. The Client hereby acknowledges its obligations as a data controller in terms of the Act and warrants and represents to HA Hosting that it has discharged and shall discharge its obligations in terms thereof, and the Client shall hold HA Hosting harmless from any claims by any third party relating thereto.
- 13.3. Subject to the above, any Personal Data (as defined in the Act) provided by the Client to HA Hosting shall at all times remain the Client's property and HA Hosting



shall take all reasonable precautions to preserve the integrity of such Personal Data and to prevent any corruption or loss, damage, or destruction of such Personal Data.

- 13.4. All data, personal and otherwise, will always only be stored in UK data centres.
- 13.5. HA Hosting reserves the right to disclose to the police, the fire authorities, or any other relevant authority, or insurance company and any of their representatives, details of the Personal Data or records kept by us or in our possession at any time.
- 13.6. A Denial-of-Service (DoS) attack or Distributed-Denial-of-Service (DDoS) attack is an attack intended to prevent a machine or network from being available to its intended users. They achieve this by flooding the target device or network with volumes of traffic, or triggers designed to force a device to fail.
- 13.7. Such attacks deprive legitimate users from accessing, usually business/work related services or resources they expect or require, and they can have a devastating impact on businesses.
- 13.8. Where clients' servers are installed and reside within HA Hosting's data centres, it is the client's responsibility to ensure sufficient measures have been put in place to prevent such attacks, and HA Hosting will not be held responsible for the failure to put such measures in place.
- 13.9. HA Hosting also reserves the right to block any IP addresses targeted by DOS or DDOS attacks for as long as necessary to ensure other maximum protection of data and services.
- 13.10. Where such an attack occurs, HA Hosting will be pleased to provide expert advice and assistance as required to stop the attack and prevent future occurrences.

## 14. EMPLOYEES & EMPLOYMENT

- 14.1. The parties agree that during the Term of the Agreement, and for a period of twelve (12) months thereafter, neither party shall directly or indirectly solicit for employment any officers or employees employed then or within the preceding twelve (12) months by the other party who is or was involved in the provision or management of the provision of the Services without the prior consent in Writing of the party whose staff are to be solicited. In the event that a party employs or hires any of the other party's personnel in breach of this Clause, the breaching party shall pay to the injured party upon demand, as liquidated damages, a sum equal to the annual salary of such personnel at the time of breach.
- 14.2. Notwithstanding HA Hosting's consent, the parties recognise that employment of the aforementioned HA Hosting officers or employees may adversely affect HA Hosting's ability to perform the Service and the Client shall not be entitled to any resulting remedies. Nothing in this Clause shall restrict either party from employing any individuals who apply unsolicited in response to general advertising or other general recruitment campaigns.

## 15. REMEDIES

- 15.1. The rights and remedies provided for by this agreement are cumulative with and not exclusive of any rights or remedies provided by law.



## 16. ASSIGNATION

16.1. The Client shall not assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Agreement in whole or in part without the prior consent of HA Hosting in Writing, which consent shall not be unreasonably withheld or delayed. HA Hosting may subcontract, assign, or transfer our obligations or rights to a competent third party or to any associated company whether in whole or in part.

## 17. ENTIRE AGREEMENT

17.1. These terms and conditions, together with the Agreement, set out the entire understanding of the parties with respect to their subject matter and replace any prior agreements or understandings or representations (unless fraudulent), whether in Writing or oral.

## 18. JURISDICTION

18.1. This Agreement shall be governed by, and construed in accordance with, the laws of England.

## 19. SLA

19.1. SLA if HA Hosting breaches our SLA commitments, service credits will be allocated as per document xxx which can be found here <https://www.hahosting.com/currentsla/>