



## Hosting Terms and Conditions

These Hosting Terms and Conditions relate only to hosting services provided by Creative Local Solutions, and do not cover any web development services that we provide.

Please read them carefully as they set out our and your legal rights and obligations in relation to our hosting services.

You should print a copy of this document 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.

### **AGREEMENT:**

#### **Definitions and interpretation**

In the Agreement:

“Creative Local Solutions” and “CLS” mean the self-employed business of Rob Squires, located at 8 Quebec Rd, Aberystwyth, SY23 3QT.

“Customer” means the person or entity purchasing hosting services from CLS, as identified in the ordering process for the Services (“Order”).

“Agreement” means the agreement between CLS and the Customer incorporating these Hosting Terms and Conditions and the Order and any amendments to it from time to time;

“Services” means the services specified in the Order;

“Resources” means the resources required by the Services;

“Implementation Date” means the date when the Agreement comes into force in accordance with Clause;

“Minimum Term” means the billing interval chosen by the Customer for a service, starting on the Implementation Date;

“Term” means the term of the Agreement;

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

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

“Charges” means the amounts payable by the Customer to CLS under or in relation to the Agreement;

“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;

“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);

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

“Prohibited Content” means:

1. material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or other third party rights, or may give rise to any form of legal action against CLS or the Customer or any third party;
2. pornographic or lewd material;
3. 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;

“Website” means any website belonging to the Customer that is specified in the Order, and is hosted through 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 Implementation Date or on any anniversary of the Implementation Date.

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

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

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

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.

## **The Agreement**

The Customer, warrants that they are 18 years of age or older and capable of entering into this agreement.

In order to apply to become a Customer, the applicant must complete and submit the Order.

CLS reserves the right to refuse to provide services to the client for any reason and with no obligation to explain those reasons to the client.

If the applicant makes any input errors during the order process, these may be identified and corrected by the applicant before the Order is submitted.

This Agreement will come into force if and when CLS sends to the Customer an order confirmation email, following the submission of a completed Order by the Customer.

This Agreement will continue in force indefinitely, unless and until terminated in accordance with Clause.

## **Services and Resources**

Upon completion of set-up of hosting services, the Client will be provided with a Hosting "Secrets" document, which provides login credentials for their control panel, and other services provided by CLS.

CLS endeavours to be available on Business Days between the hours of 9.30 am and 5.00 pm (London time), for the purpose of providing support to the Customer (and CLS' other customers). CLS will use reasonable endeavours to respond to requests for support within 1 business day.

CLS may suspend some or all of the Services in order to carry out scheduled maintenance or repairs. Subject to this, CLS will use its best endeavours to maintain website availability levels as specified.

Where specified in the Services, automated "off-server" backups of the Customer's data take place on a daily basis. CLS will only restore a data backup with written permission from the Customer, or upon written request from the Customer. The Customer has access to their backup data using the credentials provided in the Secrets document. Backup data is stored off-server for no longer than 4 weeks.

Most hosting services provided by CLS include resource usage limits of specific resources, including some or all but not limited to: disk space, databases, email accounts, and email send limits. The price for the service includes the amount of resources as described in the product description, if the client exceeds any resources then an additional charge may be made at the discretion of CLS.

It is the responsibility of the client to monitor resource usage to avoid such charges however CLS will endeavour to warn clients prior to such resource limits being exceeded and before charges are made. In addition, where the client exceeds any resources, such

resources may be degraded or suspended either temporarily or permanently in order to ensure the stability and availability of the wider CLS network for the enjoyment of other clients.

### **Customer Responsibilities**

The Customer will provide CLS with all co-operation, information and documentation reasonably required for the implementation and provision of hosting Services, and the Customer will be responsible for procuring any third party co-operation reasonably required for the implementation and hosting of the Services.

The Services are provided to the Customer only, and the Customer may not resell the Services to any third party.

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.

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 CLS immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.

### **Customer Conduct**

CLS will not tolerate the Customer being abusive to our operatives. Where the Customer has made threatening or abusive comments, gestures, or threats to our operatives, this will constitute a breach of these Hosting Terms and Conditions and CLS reserves the right to terminate this Agreement with immediate effect without refund.

If during the course of a conversation by telephone, email, or other form of communication, the Customer makes reference to any form of legal action directed toward CLS or make any comment that we may reasonably take to imply or infer a possible intent to pursue legal action against CLS we reserve the right to refuse telephone and email support and only provide further support and communication in writing via recorded delivery. We also reserve the right in this scenario to suspend or terminate Services with immediate effect.

Should CLS during the course of providing or preparing to provide a service feel that your needs may be better met by an alternative supplier CLS reserves the right to terminate your service at our sole discretion. Where service has already been made available CLS will, whenever possible, give at least 30 days notice of such a termination.

### **Modification of Services**

CLS reserves the right at any time to amend, improve, or correct the Services or software (or any part thereof) provided that such modification does not negatively materially affect

the overall quality of the Services. CLS shall endeavour to give the Customer reasonable notice of such modifications but this may not always be possible and CLS shall not be liable to the Customer or to any third party for any such modification or any failure to give such notice.

### **Acceptable Use**

The Customer must not use any of the Services:

1. to host, store, send, relay or process any Prohibited Content;
2. for any purpose which is unlawful, fraudulent, or infringes any third party rights;
3. in any way which may put CLS in breach of a contractual or other obligation owed by CLS to any internet service provider.

CLS reserves the right to remove content from a Website where it reasonably suspects such content is Prohibited Content.

A Website's utilisation of Resources must not exceed the limits set out in the Order. If a 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 following notice from CLS 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.

The Customer acknowledges that CLS does not purport to monitor the content of the Website or the use of the Services.

Where CLS reasonably suspects that there has been a breach of this Clause, CLS may suspend any or all of the Services and/or the Customer's access to any or all Services while it investigates the matter.

Subject to Clause, any breach by the Customer of this Clause will be deemed to be a material breach of the Agreement for the purposes of Clause.

The Customer will indemnify CLS against all damages, losses and expenses arising as a result of any breach by the Customer of this Clause.

### **Charges and payment**

CLS will issue the Customer with an invoice for services upon confirmation of the Order, which must be paid before services will commence. For some services an additional initial Charge may be required for any set-up work that is required. In such cases the set-up charge will be invoiced separately.

Refunds will only be given at the discretion of CLS or when required by law. Setup costs are non-refundable, unless required by law.

CLS will issue invoices for the Charges to the Customer from time to time in advance or arrears during the Term.

The Customer will pay the Charges to CLS within 30 days of the date of issue of an invoice issued in accordance with Clause and in any event in advance of the period of Services to which the Charges relate.

All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.

Charges must be paid by direct debit, bank transfer or by cheque (using such payment details as are notified by CLS to the Customer from time to time).

If the Customer does not pay any amount properly due to CLS under or in connection with the Agreement, CLS may:

1. withhold administrative access and suspend any relevant public facing websites without prior notice.
2. charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of Nationwide Building Society from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
3. claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

## **Support**

CLS will provide technical support to the Customer to support any aspect of the provision and use of the Services. Support does not cover the installation or use of Customer installed or supplied software unless the provision of the Services are preventing the use or installation of that software. All technical support is subject to a "fair use" policy and CLS reserves the right to suspend or restrict the Customer's access to technical support (or to make an additional charge for such support) if the Customer uses technical support in breach of this fair use policy.

CLS does not guarantee or warranty the suitability of the Services for specific software supplied by the Customer. It is the responsibility of the Customer to ensure that the Services meet the needs and requirement of software the Customer intends to use with the Services.

Support shall not include services for problems arising out of

1. tampering, modification, alteration, or addition to software, which is undertaken by persons other than CLS or its authorised representatives, or
2. software programs supplied by the Customer.

The Customer shall document, and promptly report all errors and malfunctions of the Services to CLS. The Customer shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable amount of time after such procedures have been received from CLS provided the procedures specified are reasonable.

The Customer shall properly train its personnel in the use of the Services provided in the Agreement.

Any problems caused by the Customer to the Services (which include, but are not limited to, the deletion of necessary files, accidental or intentional infection by a virus or trojan) may result in extra charges to the Customer at the rate of £50 per 60 minutes, or part thereof.

### **Hosting and Maintenance services**

Where specified in the Order, CLS will provide Hosting and Maintenance services for the Customer's Website(s). Hosting and Maintenance includes:

1. The application of security upgrades to third party open source software used by the Website;
2. Technical fixes to the configuration of the Website, or the Website's hosting configuration, in circumstances where the hosting setup is incompatible with the Website's software, and / or is causing the Website to malfunction.

CLS does not warrant to provide Hosting and Maintenance in circumstances where third party open source software used by the Website is causing it to malfunction in a manner that is not specifically related to the hosting of the Website.

In such circumstances CLS will endeavour to provide a reasonable level of support to the Customer to help identify the problem, and to recommend a course of action.

Hosting and Maintenance does not include any form of activity than can be reasonably construed as "web development", above and beyond the Supported Hosting and Maintenance services included in Clause. CLS will negotiate additional web development services, on the understanding that these will be charged separately and are not covered by the Agreement.

### **Warranties**

The Customer warrants to CLS that it has the legal right and authority to enter into and perform its obligations under the Agreement.

CLS warrants to the Customer:

1. that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
2. that it will perform its obligations under the Agreement with reasonable care and skill.

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.

### **Limitations of liability**

Nothing in the Agreement will exclude or limit the liability of either party for:

1. death or personal injury caused by that party's negligence;
2. fraud or fraudulent misrepresentation on the part of that party; or
3. any other liability which may not be excluded or limited under applicable law.

Subject to Clause, CLS' 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:

1. CLS 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;
2. CLS will not be liable for any losses arising out of a Force Majeure Event; and
3. CLS'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 CLS under the Agreement during the 12 month period immediately preceding the event or series of events.

### **Indemnity**

The Customer agrees to fully indemnify and keep CLS, its subsidiaries, affiliates, officers, partners and employees fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred by it or them and arising from any of the following:

1. The Customer's breach of the Agreement or its negligence or other act, omission or default;
2. The operation of break down of any equipment or software owned or used by the Customer but not the hardware and/or software;
3. The Customer's use of misuse of services;
4. The Customer infringing (whether innocently or knowingly) third party rights (Including but not limited to Intellectual Property Rights).



## **Data protection**

The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to CLS under the Agreement, and that the processing of that Personal Data by CLS 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).

CLS warrants that:

1. it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by CLS on behalf of the Customer; and
2. 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 CLS on behalf of the Customer.

## **Confidentiality**

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.

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

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.

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

1. has been published or is known to the public (other than as a result of a breach of the Agreement);
2. 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
3. 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.

## **Modification of the Agreement**

CLS reserves the right to modify the Agreement at any time and without advance notice, effective upon making the modifications available on the CLS website and taking reasonable effort to advise customers of those updated terms and conditions. Continued use of the Services after such changes shall constitute the Customer's consent to such changes. CLS does not and will not assume any obligation to notify you of any changes.

## **Termination**

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

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

1. 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
2. fails to pay any amount due under the Agreement in full and on time.

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

1. 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;
2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
3. 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);
4. (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.

## **Effects of termination**

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.

Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.

If the Agreement is terminated under Clause, or by the Customer under Clause or:

1. CLS will promptly provide to the Customer an electronic copy of the Website(s) included in the Order;
2. CLS will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Website(s) included in the Order to the Customer or another service provider, subject to payment of CLS' reasonable expenses; and

3. the Customer will be entitled to a refund of any Charges paid by the Customer to CLS 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 CLS (such amount to be calculated by CLS using any reasonable methodology).

Save as provided in Clause, 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 CLS.

## **General**

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 email, for the attention of the relevant person, and to the relevant address or email address given below in the case of CLS or specified on the Order in the case of the Customer (or as notified by one party to the other in accordance with this Clause).

Creative Local Solutions:

Rob Squires, 8 Quebec Rd, Aberystwyth, SY23 3QT.  
rob@creativelocalsolutions.co.uk.

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):

1. where the notice is delivered personally, at the time of delivery;
2. where the notice sent by first class post, 48 hours after posting; and
3. where the notice sent by email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

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).

Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

CLS may freely assign its rights and obligations under the Agreement without the Customer’s consent. 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.

CLS may subcontract any of its obligations under the Agreement to any third party.

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.

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.

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, 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.

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.

## **Questions**

Questions relating to this agreement or a possible violation of this agreement should be directed to [rob@creativelocalsolutions.co.uk](mailto:rob@creativelocalsolutions.co.uk) or sent to the business address via post.

## **Version**

Document Version: 1.0

Last Updated: October 2024