



Service Terms and Conditions of Contract

This Contract No. [] is made on the [] and is between:

(1) **JACKDAW WEB DESIGN**, of The Town Hall, High Street East, Wallsend, Tyne and Wear, NE28 7AT ("the Company"); and

(2) [**NAME**] of [Address] registered in [Country] under No. [Number] "The Client"

Whereas:

(1) The Company is a digital marketing agency offering website design, development, maintenance support and hosting services to clients using all appropriate hardware providers connected to the world wide web via the internet.

(2) The Client wishes to use the Company's services ("Service") to Host and Support the Client's website and by accepting a Proposal or making use of the Services or making payment of an invoice to use the Services supplied acknowledges that they have read, understood and agreed to these Terms and Conditions to the exclusion of all others.

It is agreed as follows:

1 Definitions and Interpretation

In this Contract, unless the context otherwise requires, the following expressions have the following meanings:

"**Account**" means the details of the Client that are required and held by the Company to facilitate the provision of the Service to the Client including, but not limited to, identification and location details, payment details, username and password, and details of the Service provided to the Client;

"**Business Day**" means a day (that is not a Saturday or Sunday) on which banks are open for business in the UK.

“Contract” means an accepted Proposal and these Terms and Conditions;

"Client Website" means the website that the Company is Hosting for the Client and refers to all parts of that website including, but not limited to, component files and related services such as email;

"Fee" means the sum payable by the Client to the Company in order to receive the Company's Service;

"Hosting Hardware" means all computer and networking equipment used by the Company in the provision of the Service including, but not limited to, servers and network infrastructure;

"Support Package" means one of the Service packages offered by the Company and generally refers to the package selected by the Client;

"Software" means all software used by the Company in the provision of the Service;

“Intellectual Property” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, Services marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world as at the date of the Contract or in the future.

"Order" means an order placed by the Client with the Company for the provision of the Service;

“Proposal” a separate document giving details of the Services to be provided by the Company to the Client and their mutual obligations; where

"Service" means the collective components of the Company's Hosting and Support services; and

“Support” means website support and maintenance for websites hosted on the Company servers. See Proposal for a full definition.

2 Service

- 2.1 The Company may, in its sole discretion, alter, improve or otherwise modify the Service provided that any such change will not significantly alter the provision of the Service to the Client or result in the removal of any features or services that changes and will receive full documentation of any action required on their part.
- 2.2 No alterations to the Service shall affect the Fees payable by the Client during their contractual period.
- 2.3 The Company may take any action necessary to address or repair faults in Hosting Hardware or Company Software without any prior notice to the Client. If such faults or remedial action results in an interruption to the provision of the Service, the Client will be notified at the Company's earliest convenience.

3 Availability of Service

- 3.1 The Company will use its reasonable endeavours throughout the Term of this Contract to provide 98% service uptime, excluding planned or emergency server maintenance or conditions beyond our reasonable control.
- 3.2 All customers shall be notified of planned maintenance in advance through the status page or via e-mail where such an e-mail shall indicate the length of the planned maintenance.
- 3.3 Where the Service is unavailable for more than 24 hours the Company will contact the Client and provide reasons for the interruption or, where this is not possible due to an undiagnosed problem, state that the problem is undiagnosed but is being investigated.
- 3.4 Whilst the Company will use reasonable endeavours to ensure the integrity and security of the Service, the Company does not guarantee that the Service will be free from unauthorised users or hackers and the **Company shall be under no liability for non-receipt or misrouting of email or for any other failure of email.**
- 3.5 Where Service interruption due to hardware or software failure cannot be remedied within 3 Business Days the Company, with consent of the Client, shall endeavour to transfer the Client's Website to alternative hardware or software in order to restore the provision of the Service.
- 3.6 Where the Client and/or the Client's users are unable to access/use the Client's Website, the Client shall first ascertain whether the inability of access/use is caused by a failure on the part of the Client's and/or its users' internet service provider and/or equipment. After performing these checks, the Client shall contact the Company using the following details: Email: jackie@jackdawwebdesign.co.uk or telephone: 07762 140433.
- 3.7 Where the provision of the Service is interrupted through the fault of any third party, the Company shall bear no responsibility or liability. Where it is subsequently established that fault does not lie with the Company but with the Client's and/or its users' internet service provider and/or equipment, the Company reserves the right to charge the Client such reasonable cost as the Company may have incurred.

4 Fees and Payment

- 4.1 Fees for the Support Packages offered by the Company are as quoted in the Proposal. All charges payable by the Client shall be in accordance with the information quoted.
- 4.2 The Client is required to pay all fees due strictly in accordance with the proposal.
- 4.3 For the first 12 months of Service provision in some cases the payment of fees due shall form part of the Order process.
 - 4.3.1 For all subsequent 12 month periods of Service provision the Client will be sent a renewal notice 30 Business Days before the 12 month period is due to expire.
 - 4.3.2 Payment must be made within the period at Clause 4.3.1 in order for provision of the Service to continue without interruption.
- 4.4 The Company may at any time change the price of its Support Packages, however the Client will not be subject to any additional charges or refunds during a 12 month period of Service provision.
 - 4.4.1 Any change in fees will be reflected in subsequent renewals of Service provision.
 - 4.4.2 The Company reserves the right to continue charging old fees for renewals where the new fee is higher.
- 4.5 The Client may, at any time, change their Support Package, if the Client chooses to do so. The Client will be invoiced for a new 12 month period of Service provision in accordance with the fees for their new chosen Support Package.
- 4.6 All fees payable by the Client to the Company shall be paid in full, without set off or deduction.
- 4.7 Methods of payment may include BACS or cash. Payment by cheque, Paypal or other shall be subject to an administration charge.
- 4.8 Clause 4.7 notwithstanding, the Company reserves the right to charge the Client any fees encountered as a result of such payments.
- 4.9 Returned cheques will incur an additional fee of £50.00 +VAT per returned cheque. The Company reserves the right to consider an account to be overdue in the event of a returned cheque
- 4.10 The Company reserves the right to suspend the Service or terminate the Contract if fees are not paid on or before the due date.
- 4.11 Where an account requires litigation to collect an overdue debt an administration fee of £2500.00 plus VAT at the prevailing rate will be payable.
- 4.12 Clients whose accounts become overdue agree to pay the Company reasonable legal expenses and third party collection agency fees in the enforcement of these Terms and Conditions.
- 4.13 Interest shall be payable on overdue payments at the rate of 4% daily over the Bank of England base rate to run from the due date for payment thereof until receipt by the Company of the full amount whether or not after judgement.

5 Changes to this Contract

- 5.1 The Company reserves the right to change the terms of this Contract and all other terms and conditions and policies which may affect Clients in order to comply with changes in the law.
- 5.2 The Client will be informed of any such changes and shall be deemed to be bound by them 1 calendar month after receiving the notice.
- 5.3 If the Client does not agree to be bound by the changes they may terminate this Contract in accordance with the Term and Termination clause of this Contract.

6 Client Undertakings and Obligations

- 6.1 The Client may not use the Service or any other Hosting Hardware and Software for any unlawful or otherwise inappropriate purposes. This includes, but is not limited to:
 - 6.1.1 Distribution of viruses, spyware, malware, or any other form of code designed to cause harm or nuisance to hardware or software or to obtain data without consent;
 - 6.1.2 Distribution of pirated material including, but not limited to software, movies, music and written works; and Distribution of obscene or illegal material including that which is pornographic, abusive, threatening, malicious, harassing, fraudulent, defamatory or that which encourages criminal activities.
 - 6.1.3 Distribution of large volumes of unsolicited email (*spam*) to recipients. All complaints made to the Company of such activity will be investigated, and may result in immediate suspension or cancellation of service at the Company's sole discretion.
 - 6.1.4 The Client may not use their website to link to any other sites or systems Hosting any material described above.
 - 6.1.5 Use of the Client's Website in any manner which is a violation or infringement of the rights of any individual, firm or company within the United Kingdom and elsewhere.
- 6.2 The Client will monitor and supervise any and all third party activity on their website (including communications systems such as forums). Any third party activity that may fall within the criteria above must be stopped or removed, as appropriate.
- 6.3 The Client must ensure that any and all activity conducted through the Client's Website in relation to the collection of personal information complies with the provisions of the Data Protection Act 1998.
- 6.4 The Client must ensure that any and all activity conducted through the Client's Website in relation to selling complies with the provisions of the Distance Selling Regulations 2000.
- 6.5 The Client is responsible and accountable for all activity relating to their website and the Service that is carried out by third parties on their behalf.
- 6.6 The Client will use its best and reasonable endeavours to supply all information required to facilitate the provision of the Service to the Company in a timely fashion.
- 6.7 The Client recognises that available bandwidth is limited, and that the Company may limit access to any large amounts of material made available through the Service in order to maintain a reasonable level of service to the Company's other clients. Any such action will be notified to the Client within 14 days of its implementation.

7 Intellectual Property and Proprietary Rights

- 7.1 The Client will not acquire ownership rights over any of the Company's Intellectual Property in or in relation to the Service or in relation to any other property owned by the Company.
- 7.2 The Company will not acquire ownership rights over any of the Client's Intellectual Property in the Client's Website or any other material belonging to the Client. In consideration of the Fees and Payment paid in full by the Client to the Company, the Company grants to the Client a non-exclusive licence to use any Software issued and authorised by the Company for use by the Client for the Client's Website.
- 7.3 7.1 and 7.2 notwithstanding, the Company reserves the right to use any artwork, ideas, sketches, prototypes and drafts created as part of the Service as examples of client work.
- 7.4 The Client may not use the Software for any other purpose other than as specified in this Contract without the prior written consent of the Company and the Client acknowledges that additional fees may be payable on any change of use approved by the Company.
- 7.5 The Client agrees to fully indemnify the Company against all costs, expenses, liabilities, losses, damages, claims and judgements that the Company may incur or be subject to as a result of the infringement of any Intellectual Property infringement owned by third parties arising from:
- 7.5.1 The Client's failure to obtain the necessary rights and permissions from third parties in order to enable the Company to legally provide the Service;
- 7.5.2 The provision of the Service by the Company based upon information and material provided by the Client.

8 Liability

- 8.1 The Company shall not be liable to the Client or to third parties for:
- 8.1.1 Any losses resulting from interruptions or downtime to the Service;
- 8.1.2 Any inability, on the part of the Client, to use the Service;
- 8.1.3 Any damage or loss resulting from the loss of confidentiality caused by the storage of information on the internet.
- 8.2 Nothing in this Clause shall exclude the liability of the Company for death or personal injury resulting from the Company's negligence or that of its employees or agents.

9 Warranties and Disclaimer

- 9.1 Subject to the provisions of this Contract, the Company gives no warranty, express or implied, in connection with the Service as to fitness for purpose, quality, non-infringement or merchantability.
- 9.2 The Company gives no warranties as to the performance of the website in the context of ranking by search engines.

- 9.3 The Company provides links or references to the Client website solely for the convenience of prospective customers but gives no warranty as to the efficacy of such links or references.
- 9.4 Where the Client does not use the Company hosting services, the management and hosting of the domain name remain the full responsibility of the Client and the Company accepts no liability whatsoever.
- 9.5 Both Parties and the signatories to the Contract warrant that they are authorised and permitted to enter into the Contract, and have obtained all necessary permissions and approvals.
- 9.6 Both parties warrant and undertake that they are not aware as at the date of the Contract of anything within their reasonable control which might or will adversely affect their ability to fulfil the obligations under the Contract.

10 Indemnities and Limitation of Liability

- 10.1 The Client will fully indemnify the Company against all costs, expenses, liabilities, losses, damages and judgements that the Company may incur or be subject to as a result of any of the following:
- 10.1.1 The Client's misuse of the Service;
 - 10.1.2 The Client's breach of this Contract;
 - 10.1.3 The Client's negligence or other act of default;
 - 10.1.4 The Activities of third parties conducted on the Client's website using facilities such as blogs, forums and chat.
- 10.2 Neither party shall be liable to the other under this Contract in contract, tort, or otherwise (including negligence), pre-contract or other representations (other than fraudulent or negligent misrepresentations) or otherwise for any loss of business, contracts, profits or anticipated savings or for any indirect or consequential or loss whatsoever.
- 10.3 The Client agrees to indemnify the Company against any claims, damages, losses, costs and expenses which the Company may sustain or incur in relation to any content and materials which the Client provides, such indemnity applying in respect of any claims for any breach of applicable law or regulation or any infringement of any intellectual property rights.
- 10.4 The Company agrees to indemnify the Client against any claims, damages, losses, costs and expenses which the Client may sustain or incur in relation to breaches of the Confidentiality and Intellectual Property Rights clauses of this Contract committed knowingly by the Company.
- 10.5 Nothing in this Contract shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees

11 Force Majeure

- 11.1 Neither the Company nor the Client shall be liable for breaching this Contract where that breach results from Force Majeure.

11.2 Force Majeure refers to any event that is beyond the reasonable control of the parties and includes, but is not limited to, acts of God; acts of war; national emergencies; governmental action; union action; civil unrest; fire; explosion; flood and theft.

12 Term and Termination

12.1 The initial period of Service provision will commence on the date specified in the Proposal and shall last for the period specified in the Proposal, subject to the termination provisions below.

12.2 Subsequent periods of Service Provision shall last for a period of 12 months each and will follow on from a previous period, without interruption, subject to the fulfilment of the Client's obligations under the Fees and Payment Clause of this Contract. All subsequent periods are subject to the termination provisions below.

12.3 Either party may terminate this Contract immediately in the event that:

12.3.1 Either party commits a serious, grave or material breach or persistent breaches of this Contract including non-performance, default or neglect of its duties, responsibilities and obligations under this Contract, and

12.3.2 Such breach remains unremedied for a period of 30 days from written notice given by the other party specifying the breach and requiring its remedy; or

12.3.3 Such breach is not capable of remedy.

12.4 The Company reserves the right to terminate this Contract at any point with one month's notice at the Company's discretion, or The Company reserves the right to terminate this Contract or to suspend the Service in the following circumstances:

12.4.1 If the Client fails to pay fees due under the Fees and Payment Clause of this Contract;

12.4.2 If the Client is in breach of the terms of this Contract;

12.4.3 If the Client becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;

12.4.4 If the Client is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or

12.4.5 If the Client has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.

12.5 The Client may request the termination of the Service and this Contract by written notice, 1 month in advance. The following shall apply to such situations:

12.5.1 Any issuing of refunds is at the sole discretion of the Company.

12.5.2 If the Client wishes to terminate during the course of a 12 month period of Service provision the Service will end 1 month after the Company receives the Client's notice.

12.6 On termination or suspension of the Service and this Contract the Client's Website and all related or stored material will be removed and may be irrevocably lost.

- 12.7 If the Client sends a termination notice in error or changes their mind, the Company must be informed within 30 days of the notice that the Client wishes their Account to be restored.
- 12.8 Any notification outside of this period will require:
 - 12.8.1 a new Account to be set up;
 - 12.8.2 the Client to pay for a full 12 month period; and may require
 - 12.8.3 the complete rebuild of the website the cost of which the Client accepts and agrees that he is liable.
- 12.9 In any event, the Client will be required to pay a re-activation fee of £100.00 plus VAT.
- 12.10 Upon termination of this Contract the following shall become immediately due:
 - 12.10.1 Any and all outstanding invoices;
 - 12.10.2 Any costs accrued up to termination date not already subject to invoice;
 - 12.10.3 Any costs incurred by the Company upon termination of the contract.

13 Assignment

- 13.1 The Company reserves the right to assign or otherwise transfer any rights or obligations under this Contract.
- 13.2 The Client may not assign or transfer any of its rights or obligations under this Contract without the prior written consent of the Company.

14 Severance

- 14.1 In the event that any provision of this Contract is found to be invalid or otherwise unenforceable for any reason, the remaining provisions shall continue in full force without being impaired or invalidated in any way.
- 14.2 The waiver by either party of any provision of this Contract will not operate or be interpreted as a waiver of any other provision or a subsequent breach of any provision.

15 Confidentiality

- 15.1 Both parties shall keep in strict confidence all information which are of a confidential nature and have been disclosed by one party to the other party and shall procure that the receiving party's employees, agents, consultants or subcontractors keep in strict confidence all such information other than for the purposes of performing its obligations under this Contract.

16 Notice

- 16.1 Any notice given by either of the parties under this Contract shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery or first-class post to the receiving party.
- 16.2 Any such notice shall be deemed to be effectively served as follows:
 - 16.2.1 In the case of service by pre-paid recorded delivery or first-class post 48 hours after posting;

16.2.2 In the case of service by email on the next working day

17 Joint Venture or Partnership

17.1 Nothing in this Contract shall be construed as creating a partnership, joint venture or an agency relationship between the parties and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party.

18 General

18.1 It is hereby declared that the foregoing paragraphs, sub-paragraphs and clauses of this Contract shall be read and construed independently of each other.

18.2 Should any part of this Contract or its paragraphs, sub-paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub-paragraphs and clauses.

18.3 No addition to or modification of any clause in this Contract shall be binding on the parties unless made by a written instrument and signed by the signatories to this Contract or their duly authorised representatives.

18.4 This Contract sets out the entire contract and understanding of the parties and is in substitution of any previous written or oral Contracts between the parties.

19 Jurisdiction

19.1 This Contract shall be interpreted construed and enforced in accordance with the laws of England and Wales.

19.2 The parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

20 Mediation

20.1 If at any time any question, dispute or difference whatsoever shall arise as to the formation, meaning, operation, validity or effect of the Contract or the rights, duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of the Contract, either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to a mutually agreed Third Party Mediator within 14 days of such notice.

21 Arbitration

21.1 If an attempt at Mediation as in Clause 20 should fail then the dispute or difference shall be referred to the arbitration of a single arbitrator to be agreed upon by the parties within 14 days of the failure of such an attempt, or in default of such Contract, to be nominated by the President for the time being of the Law Society of England and Wales such arbitration to be conducted in accordance with the Arbitration Act 1996.

22 Headings

22.1 The headings in these Terms and Conditions are for convenience only and are not intended to have any legal effect.

23 Third Party Rights

23.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

