

# **Web Hosting and Maintenance Terms DRAFT**

**Global River Ltd**

## Web Hosting Terms<sup>1</sup>

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.<sup>2</sup>

These Web Hosting Terms are available in the English language only.<sup>3</sup>

If you have any questions or complaints about these Web Hosting Terms or our Services, please contact us by writing by email to [jon@global-river.co.uk](mailto:jon@global-river.co.uk).

### AGREEMENT:

#### 1. Definitions and interpretation

##### 1.1 In the Agreement:

**"Affiliate"** means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

**"Agreement"** means the agreement between the Host and the Customer incorporating these Web Hosting Terms and any Registration Form, 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 17:30 on a Business Day;

**"Charges"** means the amounts payable by the Customer to the Host under or in relation to the Agreement;

**"Confidential Information"** means the Customer Confidential Information and the Host Confidential Information;

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

**"Customer"** means the customer for Services under the Agreement specified in the Registration Form;

**"Customer Confidential Information"** means:

- (a) any information disclosed by the Customer to the Host during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure: (i) was marked as "confidential", or (ii) should have been reasonably understood by the Host to be confidential; and
  - (b) any personal information;
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**“Effective Date”** means the date when the Agreement comes into force in accordance with Clause [2.3];

**“Emergency Support”** means technical support and/or assistance provided by the host outside business hours or any technical support and/or assistance provided within 24 hours of a request by the Customer for the same;

**“Emergency Rate”** means the hourly rate(s) specified in the registration form for technical support and/or assistance provided by the host outside business hours or any technical support and/or assistance provided within 24 hours of a request by the Customer for the same;

**“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, denial of service 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]);

**“Host”** means Global River Ltd a company incorporated in England and Wales (registration number 07550444) having its registered office at Progress House 17 Cecil Road, Hale, Altrincham, Cheshire, WA15 9NZ;

**“Host Confidential Information”** means:

- (a) any information disclosed by the Host to the Customer the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure: (i) was marked as “confidential”, or (ii) should have been reasonably understood by the Customer to be confidential; and
- (b) any personal information;

**“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 1 Year starting on the Effective Date];

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

**“Plug In”** third party software used in conjunction with the website to perform a particular function.

**“Prohibited Content”** means:

- (a) works and materials that:
  - (i) breach any laws, regulations or legally binding codes;

(ii) infringe any person's Intellectual Property Rights or other legal rights; or

(iii) may give rise to any form of legal action against the Host or the Customer or any third party,

in each case in any jurisdiction and under any applicable law;

[(b) obscene, indecent, pornographic, lewd, graphic, offensive or grotesque works and materials;

[(c) works and materials which are likely to cause annoyance, inconvenience or anxiety to any internet user; and

[(d) spam, including unsolicited bulk messages and unsolicited commercial messages;

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

**"Resources"** means the resources specified on the Registration Form;

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

**"Standard"** Rate means the hourly rate(s) specified in the registration form for technical support and/or assistance;

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

**"Website"** means the Customer's website or websites hosted through the Services;

**"Webworks Rate"** means the hourly rate(s) specified in the registration form for technical support and/or assistance.

**"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.

## **2. The Agreement**

2.1 In order to apply to become a Customer, the applicant must complete and submit the Registration Form.

- 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 acknowledged by the Host;
- 2.3 This Agreement will come into force if and when the Host sends to the Customer an acceptance email, following the submission of a completed Registration Form by the Customer.
- 2.4 This Agreement will continue in force indefinitely, unless and until terminated in accordance with Clause [12].

### **3. Transition and implementation**

- 3.1 At the request of the Customer, the Host 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 The Host will implement the hosting of the Website on or before the Implementation Date or, where the Host 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), the Customer will comprehensively test the hosting of the Website and will inform the Host of the results of those tests.

### **4. Services**

- 4.1 From the date of actual implementation, the Host will host the Website in the manner specified on the Registration Form, and will make available the Resources for this purpose.
- 4.2 The Host may suspend some or all of the Services in order to carry out scheduled or emergency maintenance or repairs. The Host will use reasonable endeavours to minimise the disruption caused by maintenance and repairs. Subject to this Clause 4.2, the Host will use reasonable endeavours to maintain the Website availability level specified in the Schedule.
- 4.3 The Host may make available to the Customer the ability to update or amend the Website.
- [4.4 The Host will upon request provide [POP, IMAP and webmail] email services to the Customer. All mailboxes will be protected by [anti-spam and anti-virus software]. If the Customer or a mailbox exceeds the relevant storage limit notified by the Host to the Customer from time to time, the Host may delete stored emails to bring the Customer or mailbox within the storage limit.]
- 4.5 The Host will make available, on Business Days between the hours of 9.00 am and 5.00 pm (London time), a telephone helpdesk facility for the purpose of providing support to the Customer (and the Host's other customers). The Host will use reasonable endeavours to respond to requests for support within a reasonable time.
- 4.6 The Host will make back-ups of the Customer's Website on a daily basis, and will retain such back-ups for 30 days.

- 4.7 At least once every 4 weeks, the Host will arrange for the off-site storage of a current back-up of the Customer's Website (which will be over-written on the following off-site back-up date).
- 4.8 The Host may also make back-ups of the Customer's email messages; however, the Host will not make back-ups of email messages which have been downloaded by the Customer.
- 4.9 In the event the Customer has opted for basic hosting, The Host will not update the website's software nor provide remedial services (if offered) without further charge, for any changes or updates to the site required as a result of any changes or upgrades to the software used to create the website or for any other reason. The Host will not provide or install any software updates required by the site in order to protect against any virus or hacking. Emergency support will be charged at the emergency rate.
- 4.10 In the event the Customer has opted for a basic plus hosting package, The Host will update the website's software as is from time to time required but will not provide remedial services (if offered) without further charge for any changes or updates to the site required as a result of any changes or upgrades to the software used to create the website or for any other reason. The Host will not provide or install any software updates required by the site in order to protect against any virus or hacking. Emergency support will be charged at the emergency rate.
- 4.11 In the event the Customer has opted for a Premium hosting package, The Host will update the website's software as is from time to time reasonably required and will provide further services without charge, for a maximum of five hours per year, for any changes or updates to the site required as a result of any changes or upgrades to the software used to create the website, such as the website being infected by a virus or hacked. Further services in excess of the five hours will be charged at the standard rate.
- 4.12 In the event the Customer has opted for or is currently paying for a Webworks hosting package, The Host will update the website's software as is from time to time reasonably required and will provide services at the Webworks Rate, for any changes or updates to the site required as a result of any changes or upgrades to the software used to create the website, such as the website being infected by a virus or hacked.

## **5. Customer Responsibilities**

- 5.1 The Customer will provide the Host 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 the Customer 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 the Customer only, and the Customer may not resell or sub-license the Services to any third party.

- 5.3 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.
- 5.4 It is the Customer's responsibility to keep any passwords relating to the Services confidential, and to change and retain such passwords on a regular basis. The Customer will notify the Host immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.
- 5.5 The Customer grants to the Host a worldwide, non-exclusive, royalty-free licence to copy and otherwise use the Website and other works and materials processed through the Services by or on behalf of the Customer for the purposes of:
- (a) providing the Services;
  - (b) fulfilling the Host's contractual obligations under the Agreement; and
  - (c) exercising the Host's contractual rights under the Agreement,
- and the Customer also grants to the Host the right to sub-license these rights for these purposes.

## **6. Acceptable Use**

- 6.1 The Customer 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; or
  - (c) in any way which may put the Host in breach of a contractual or other obligation owed by the Host to any internet service provider.
- 6.2 The Host 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 the Registration Form]. 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 the Host 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 [12].
- 6.4 The Customer acknowledges that the Host does not purport to monitor the content of the Website or the use of the Services.
- 6.5 Where the Host reasonably suspects that there has been a breach of the provisions of this Clause [6], the Host may suspend any or all of the Services and/or the Customer's access to any or all Services while it investigates the matter.
- 6.6 Subject to Clause [6.3], any breach by the Customer of this Clause [6] will be deemed to be a material breach of the Agreement for the purposes of Clause [12].

6.7 The Customer hereby indemnifies the Host and undertakes to keep the Host indemnified against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of legal claims) arising directly or indirectly as a result of any breach by the Customer of this Clause [6].

## **7. Charges and payment**

[7.1 The Host will issue invoices for the Charges to the Customer

[monthly [in advance / arrears] [on the [1<sup>st</sup>] day of each calendar month] during the Term

OR

from time to time [in advance / arrears] during the Term].

7.2 The Customer will pay the Charges to the Host [within [30] days of the date of [issue/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 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.

7.4 Charges must be paid by standing order, bank transfer or by cheque to RBS account number 10205224 16-22-27 unless otherwise specified by the Host

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

(a) charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily and be compounded quarterly); or

(b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

## **8. Warranties**

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

8.2 The Host warrants to the Customer:

(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 Without prejudice to the Host's obligations under Clause [8.2], the Customer acknowledges and agrees that the Services may be interrupted as a result of a hardware failure or Force Majeure Event and that the Host will not be in breach of the Agreement by virtue of such interruption[, providing that the Host must use all reasonable endeavours to remedy the interruption as soon as reasonably practicable.

8.4 All of the parties' warranties and representations 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 and subject to Clause [9.1], no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **9. Limitations and exclusions of liability**

9.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

9.2 The limitations and exclusions of liability set out in this Clause [9] [and elsewhere in the Agreement]:

- (a) are subject to Clause [9.1]; and
- (b) govern all liabilities arising under the Agreement [or any collateral contract] or in relation to the subject matter of the Agreement [or any collateral contract], including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.
- (c) the limitations and exclusions of liability in this Clause [9] will apply whether or not the liability in question arises out of any reckless, deliberate, personal and/or repudiatory conduct or breach of contract.

9.3 The Host will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

9.4 The Host will not be liable for any loss of business, contracts or commercial opportunities.

9.5 The Host will not be liable for any loss of or damage to goodwill or reputation.

9.6 The Host will not be liable in respect of any loss or corruption of any data, database or software.

[9.7 The Host will not be liable for any loss, damage or cost of remedial work caused by failure of an existing 'plug in' howsoever caused.

9.8 The Host will not be liable in respect of any special, indirect or consequential loss or damage.

9.9 The Host will not be liable for any losses arising out of a Force Majeure Event.

9.10 The Host's liability in relation to any event or series of related events will not exceed the total amount paid and payable by the Customer to the Host under the

Agreement during the three month period immediately preceding the event or events giving rise to the claim.

- 9.11 The Host's aggregate liability under the Agreement and any collateral contracts will not exceed the total amount paid and payable by the Customer to the Host under the Agreement in one year.

## **10. Data protection**

- 10.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Host under the Agreement, and that the processing of that Personal Data by the Host 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 The Host warrants that:

- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Host on behalf of the Customer; and
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing, and against loss or corruption, of Personal Data processed by the Host on behalf of the Customer.

## **11. Confidentiality**

- 11.1 The Host will:

- (a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause [11]; and
- (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

- 11.2 The Customer will:

- (a) keep confidential and not disclose the Host Confidential Information to any person save as expressly permitted by this Clause [11]; and
- (b) protect the Host Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

- 11.3 Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information disclosed.

- 11.4 The obligations set out in this Clause [11] shall not apply to:

- (a) Confidential Information that is publicly known (other than through a breach of an obligation of confidence);

- (b) Customer Confidential Information that is in possession of the Host prior to disclosure by the Customer, and Host Confidential Information that is in possession of the Customer prior to disclosure by the Host; or
  - (c) Customer Confidential Information that is received by the Host, and Host Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information.
- 11.5 Nothing in the Agreement shall restrict a party from making any disclosure of Confidential Information that is:
- (a) required by law (whether under the Regulation of Investigatory Powers Act 2000 or otherwise); or
  - (b) required by a governmental authority, stock exchange or regulatory body.

## **12. Termination**

- 12.1 Either party may terminate the Agreement at any time by giving at least 30 days written notice to the other party expiring at any time after the end of the Minimum Term.
- 12.2 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 the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
  - (b) fails to pay any amount due under the Agreement in full and on time.
- 12.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) 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;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) 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); or

- (d) 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.

### **13. Effects of termination**

- 13.1 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, 5.5, 6.7, 7.5, 9, 10, 11, 13 and 14.3 to 14.11].
- 13.2 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.
- 13.3 If the Agreement is terminated under Clause [12.1], or by the Customer under Clause [12.2] or [12.3] but not in any other case:
  - (a) the Host will promptly provide to the Customer an electronic copy of the Website;
  - (b) the Host will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Website to the Customer or another service provider, subject to payment of the Host's reasonable expenses; and
- 13.4 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 the Host.
- 13.5 Subject to Clause 13.3(a), the Host may following termination of the Agreement delete from its computer systems any or all Customer data.
- 13.6 Notwithstanding Clause [13.5], the Customer acknowledges that the Host may retain Customer data in its systems after the date of termination, whether for technical reasons, legal reasons or otherwise.

### **14. General**

- 14.1 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 or sent by recorded signed-for post for the attention of the relevant person, and to The Host's address specified on the Registration Form (or as notified by one party to the other in accordance with this Clause).
- 14.2 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 is sent by recorded signed-for post, 48 hours after posting.

- 14.3 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 14.4 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).
- 14.5 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 14.6 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 14.7 The Customer hereby agrees that the Host may freely assign any or all of its rights and obligations under the Agreement to any third party. Save as expressly provided in the Agreement, the Customer may not without the prior written consent of the Host assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any of its rights or obligations under the Agreement.
- 14.8 The Host may subcontract any of its obligations under the Agreement to any third party.
- 14.9 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.
- 14.10 Subject to Clause [9.1], 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.
- 14.11 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.