Webtimes Terms of Service

Introduction

These Terms of Service (together with the rest of our Agreement) govern our relationship with you. They include:

- the duration of our Agreement;
- fees to be paid to Webtimes;
- when Webtimes is authorised to monitor communications and content;
- the appropriate and reasonable measures Webtimes takes to protect the security of your data and our systems;
- when Webtimes is authorised to suspend or terminate your services; and
- the process followed when resolving disputes.

Summary of our Agreement

1. Commencement: The Agreement will start when Webtimes provides you with a service of any kind.

2. Acceptance of electronic invoicing: By placing an order through our website, you agree to accept electronic invoices from Webtimes for the purpose of claiming input tax.

3. Changing of service: We may change the features or functionality of any Service over time.

4. Acceptable Use Policy: This relates to the Acceptable use policy of all or any of our service providers.

5. Restriction of access to services: If you breach our Agreement, Webtimes may restrict your access to the Services.

6. Intellectual property rights: You accept that you will get no rights to our intellectual property on our systems.

7. Your Content:

   7.1 You will retain all your intellectual property rights to any of your content you host with us, or our service providers.

   7.2 Upon delivery of the website, Webtimes will allow a total of 7 days for the Customer to confirm satisfaction with the content and design. It is the responsibility of the Customer to ensure that any changes to be made are communicated to Webtimes within the 7 day period. If no such communication is received, Webtimes

reserves the right to assume the Customer is satisfied. Any further changes requested thereafter will be charged for at Webtimes' standard development rate.

8. Your Personal Data: Webtimes may keep your Personal Data and use it, for specified purposes. For example: to enable us to collect your debit order payment; as well as our internal marketing and contract administration, unless you specifically tell us that we may not do this in writing.

9. Webtimes liability to you is limited. This means that we will not be liable to you for any damages or loss that you may suffer as a result of the fulfilment of the obligations under our Agreement.

10. Governing law: South African law governs our Agreement.

11. Addresses for service: We will use the address you give us as the address to serve legal notices and documents to you.

12. Specific Terms: Our Specific Terms go into more detail and address specific issues around our products and are an extension of our Terms of Service. The Specific Terms will apply if there is any conflict of meaning with these Terms of Service. The Terms of Service extend to the Terms of service of our service providers

13. Development of new websites includes the registration on domains and hosting thereof at the service provider of choice.

14. Termination

14.1. Webtimes may terminate any Services on five days written notice to you.

14.2. You may terminate any Services on 30 days written notice to Webtimes as follows:

14.2.1. via email to admin@Webtimes.co.za from an authorised email address. We will confirm your request for termination via return email.

14.3. If you give Webtimes notice of termination in any manner other than as specified above, you may find that the notice was invalidly given and will not have any effect.

14.4. Breach: If you breach our Agreement, we may, without prejudice to any other rights that Webtimes may have and without notice to you:

14.4.1. claim immediate payment of all outstanding charges due to us,

14.4.2. terminate or suspend your use of the Services, (which may include the deletion of your data)

14.4.3. terminate our relationship with you; or

14.4.4. list you with any credit bureau, Internet service provider list, or the South African Fraud Prevention Service.

14.5. By agreeing to our Terms of Service, you expressly consent to this.

14.6. In all instances, we may retain all Services Fees you have already paid and recover all of our costs associated, including legal costs on an attorney and own client scale (you will be liable to pay our attorney's fees) with your breach.

14.7. Return of hardware or software: Where you have in your possession any of Webtimes hardware or software as a result of using the Service and the related Service ends, you must immediately return the hardware or software to us.

14.8. Termination of this agreement by the customer will be made in writing by an authorised person. Take note that the special prices offered for development of websites **includes a condition of hosting service for a minimum of 6 months**. Should the customer want to terminate the agreement prematurely, the remainder of the hosting fees for the full term must be payable before the agreement can be terminated.

15. Amendment to our Agreement

15.1. Webtimes reserves the right to make changes to the Agreement at any time without notice. An updated version of the Agreement will be posted on the website.

15.2. It is your responsibility as a diligent user to check any amendment posted on the website.

15.3. If you object to any amendment, you may terminate your relationship with us in terms of clause 14.

16. Customer Status

16.1. The Customer may be an incorporated entity (such as a company or close corporation), trust, partnership, or individual.

16.2. If a person enters into our Agreement:

16.2.1. in a representative capacity on behalf of a Customer who is an incorporated entity;

16.2.2. on behalf of an unincorporated entity; or

16.2.3. in any other representative capacity recognised in South African law; the person warrants that: - a) they are legally authorised to do so and indemnifies Webtimes against any loss or damage that we may sustain resulting from the person's lack of authority; and b) all the information supplied to Webtimes at any time relating to the entity, trust, partnership, association or other person who they represent is true, accurate, and complete.

16.3. We reserve the right to treat all misrepresentations by you, or the person representing you, as fraud. The person representing you indemnifies us against any loss or damage that we may sustain resulting from the person's lack of authority.

16.4. If we discover that you have fraudulently contracted to receive Services or that your representative has contracted without contractual capacity to do so, we may end our Agreement or Services immediately without any further notice to you and you may not claim any restitution or refund of any amount you have already paid, regardless of whether you have used the Services or not.

16.5. When requested, you must give us sufficient proof of the authority of the person who takes any action or executes documents on your behalf for our Agreement. This includes providing proof that the authorised signatory of your bank account has permission to debit your account.

16.6. If there is a dispute between individuals or entities you are involved with (including partners, shareholders, trustees, employees), we may act on the representation of a person claiming to be duly authorised to represent you, without having to independently verify the authority.

16.7. You indemnify us from any action or inaction. If, however, we ask you to give Webtimes independent verification of the authority of any individual, you must provide it to us in a format we find reasonably acceptable.

17. Commencement and Duration: The agreement commences at the point that payment has been made and continues until such time termination is given from either party, providing termination by the customer, complies with the 12 month hosting period requiring payment for the full period.

18. Service fees

18.1. You must pay all service fees, as soon as they become due.

18.2. Where applicable, we will give you a VAT invoice in electronic format. You agree that by submitting an application form to us when making application for Services, that the application is seen as your confirmation to accept electronic invoices for claiming input tax.

18.3. Your payment is your responsibility and a rejected payment will accrue a handling fee, per rejection.

18.4. We reserve the right to amend or vary the service fees and any amendment or variation of the service fees will be seen as an amendment of our Agreement. If we amend the service fees, Webtimes will give you at least 30 days prior notice. If you object to any amended service fees, you may terminate your relationship with us in terms of clause 14.

18.5. You will not withhold any payment of any amount you owe us for any reason, (except for an actual breach by Webtimes of our Agreement). In addition, you may

not demand any discount, refund or reduction in respect of any service fees you owe us.

18.6. If you terminate the Service for one of the above reasons, you are still liable for any third-party costs incurred during this period e.g. domain registration costs

19. Monitoring

19.1.With specific regard to the monitoring of content that is found on a website that belongs to you and which is hosted by Webtimes, we have no knowledge of, nor interest in, Customer content hosted by us on your behalf using the Services and further we do not in any way contribute to or approve the content.

19.2. If, however we determine that any content is in violation of any law (including the Films and Publications Act 65 of 1996) or of the Acceptable Use Policy, or if we receive a takedown notice from ISPA, as contemplated in section 77 of the Electronic Communications and Transactions Act 25 of 2002, we may

19.2.1. ask you to remove, amend, or modify the content;

19.2.2. terminate access to any Services or suspend or terminate any Services without notice;

19.2.3. delete the offending content without notice;

19.2.4. notify the relevant authorities of the existence of any content, make any back-up, archive, or other copies of any content; or

19.2.5. take any further steps as required or requested by any authorities without notice.

19.3. You will have no recourse against us if we act under this clause and you accordingly waive your right to make any claim or demand, or to institute any legal proceedings against us.

20. Security

20.1. You authorise us to act on any instruction given by or purporting to originate from you even if it becomes clear that both parties have been defrauded by someone else, unless you have notified us under clause 9.4 before we acted on a fraudulent instruction.

20.2. If any security violations are reasonably believed to have occurred in connection with your account, we will investigate and, if necessary, change the relevant Customer Data, including access codes and passwords, and notify you immediately.

20.3. You must tell us immediately if any other person gains access to your Customer Data by following the procedures relating to reporting misuse and give us your full co-operation in any investigation we carry out.

20.4. You indemnify us (hold us harmless) against any claim arising from:

20.4.1. your disclosure of your Customer Data to a third person;

20.4.2. the use of the Customer Data by a third person; or

20.4.3. any resulting action by you or a third party.

20.5. We reserve the right to take any action we find necessary to preserve the security and reliable operation of our infrastructure. You may not do anything (or permit anything to be done) that will compromise our security.

20.6. We have systems in place to assist our critical technical infrastructure to recover from a natural or human induced disaster. However, we do not specify any recovery time and are not liable for any loss or damage you suffer as a result of a disaster. You must make backups of your data. Nothing contained in our Agreement will be seen as a representation that any back-ups of data we have implemented will be successful or in any way will assist with disaster recovery.

21. Warranties

21.1. We warrant that Webtimes and its service providers have the facilities, infrastructure, capacity, and capability to provide the Services.

21.2. Despite this warranty, the Services are provided "as is" and "as available". No warranty of any kind is given, whether express or implied, including warranties of merchantability, title, or non-infringement, except where such a warranty is specifically required by law.

22. Intellectual Property Rights

22.1. You must comply with all laws that apply to any intellectual property.

22.2. You must get our prior written approval before using any of our marks.

22.3. You grant us non-exclusive licence to use your marks so that we may exercise our rights or fulfil our obligations under our Agreement.

22.4. Other than as specifically provided for in our Agreement, we retain all Intellectual Property Rights employed in or otherwise related to our network infrastructure, business and the provision of any of the Services under our Agreement.

23. Customer Indemnities

23.1. You indemnify (hold us harmless) from any liability arising from civil or criminal proceedings instituted against us or for any loss or damage you or a third party have suffered because of any interruption or unavailability of the Services.

23.2. You indemnify us and hold us harmless against all losses you have suffered or actions against us as a result of:

23.2.1. the use of the Services, or any downtime, outage, degradation of the network, interruption in or unavailability of the Services. This includes but is not limited to software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services,

23.2.2. non-performance or unavailability of any of the services given by an electronic communications network or service provider, including but not limited to, line failure, or in any international services or remote mail Servers,

23.2.3. non-performance or unavailability of external communications networks to which you or our network infrastructure is connected, and

23.2.4. repairs, maintenance, upgrades, modifications, alterations or replacement of any hardware forming part of the Services, or any faults or defects in the hardware.

23.3. If we are sued for something that you have indemnified us for, you will take our place in the lawsuit or be liable to pay us back for any costs, damages and expenses including attorneys' fees on the attorney and own client scale (you will be liable to pay our attorney's fees finally awarded against us by a court or agreed to in a written settlement agreement, provided that:

23.3.1. we notify you in writing as soon as we become aware of the indemnified claim so you can take steps to contest it;

23.3.2. you may assume sole control of the defence of the claim or related settlement negotiations; and

23.3.3. we will give you, at your expense, with the assistance, information, and authority necessary to enable you to perform your obligations under this clause.

23.4. You must pay us any amount due as soon as we demand payment. If you contest the amount, you must pay the amount into your attorney's trust or give us security to cover the amount, until we have resolved the dispute.

23.5. You indemnify us against any loss or damage that Webtimes may suffer because of your actions.

24. Suspension of the Services

24.1.Webtimes may temporarily suspend its Service to repair, maintain, upgrade, modify, replace or improve any of its Services. Where circumstances permit, Webtimes will provide prior notice of any service suspension to Customers. However, Webtimes will not be held liable for any resulting loss or damage suffered as a result of the service suspension

25. Force Majeure

    25.1. We will not be responsible for any breach of our Agreement caused by circumstances beyond our control, including fire, earthquake, flood, civil strike, compliance with government orders, failure of any supplier of electricity as well as no electronic communication service etc.

26. Resolving disputes

    26.1. Any dispute concerning our Agreement (including interpretation and application) exists once a party notifies the other in writing, detailing the nature of the dispute and requesting that it be resolved as per this clause. The parties will first try to resolve the dispute informally by email, phone or other methods.

    26.2. If informal dispute resolution negotiation fails, we may refer the dispute to conciliation (talks in which an agreed neutral third party tries to help the parties agree on how to end the dispute), failing which we may refer the dispute to arbitration (a hearing after which a neutral third party makes a binding decision about the dispute) (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations and you must participate. You cannot make us arbitrate. The arbitration will be held in Cape Town and conducted in English. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

    26.3. Either party may only bring a claim against the other in their individual capacity and not as a member of any class.

27. Exclusion and Limitation of Liability

    27.1. Webtimes will not be responsible for any indirect, incidental, special, or consequential damages or losses arising from our Agreement. This includes but is not limited to loss of profits, revenue, anticipated savings, business transactions, goodwill or other contracts. It is irrelevant if this is due to negligence (carelessness) or breach of contract.

    27.2. Our total liability to you is for direct damages up to a maximum amount of:

        27.2.1. three months of your base hosting fee; or

        27.2.2. R2,500; whichever is less.

    27.3. Our liability for direct damages will be excluded where we are held liable because of your use of any third-party services or products which you accessed together with the Services, but which we did not provide to you.

    27.4. This clause will apply even if you advised Webtimes of the possibility of loss of damage prior to its occurrence.

27.5. Once access to your cPanel has been granted to you, Webtimes holds no responsibility or liability for any changes made to your cPanel by you or any third party you contract the help of, including but not limited to all web pages, APIs and other files on your cPanel.

28. Notices

28.1. You must send all notices to Webtimes, whether for court process, notices or other documents or communications, at P.O. Box 2085, Somerset West, 7129, South Africa.

28.2. We may give all notices to you by email to the email address you provided to us on the application form when you first subscribed for the Services.

28.3. Any notice or communication required or permitted to be given under our Agreement will be valid and effective only if in writing.

28.4. All notices you sent to us which are:

28.4.1. sent by prepaid registered post will be deemed to have been received 14 days after date of postage,

28.4.2. delivered by hand and delivered during ordinary business hours at the physical address will be deemed to have been received on the day of delivery.

29. Data Processing

29.1. Roles of the parties under Data Protection Law

29.1.1. Depending on the particular activity, we act as both a Processor and a Controller.

29.1.2. We act as the Controller of your Personal Data when you sign-up to use our Services. We collect and store your Personal Data for specific purposes including improving our service offering and increasing service efficiency. Please refer to our Privacy Policy for more information.

29.1.3. We act as the Processor and you are the Controller of the Personal Data that we process on your behalf when we provide Services to you in terms of the Agreement. You are solely responsible for determining the purpose for which, and the manner in which Personal Data is processed.

29.2. Our obligations as your Processor

29.2.1. We warrant that at all times during the term of our Agreement, we will comply with all applicable requirements of the Data Protection Laws when processing Personal Data. If you become aware of a change in the Data Protection Laws that we may not know about, you must inform us. If you become aware that we are not complying with the Data Protection Laws, then you must give us written notice, and 30 calendar days to comply.

29.2.2. We will not access or use Personal Data, except as necessary to provide the Services to you under our Agreement.

29.2.3. In respect of the Personal Data that we process on your behalf, we will act in accordance with our Agreement, and on your written instructions that we may receive from time to time.

29.2.4. We will not disclose Personal Data to any of our employees, directors, agents, contractors or affiliates, or any third party, except as necessary to: 29.2.4.1. provide the Services to you,

29.2.4.2. comply with applicable laws, or

29.2.4.3. with your prior written consent

29.2.5. We will implement and maintain appropriate technical and organisational measures:

29.2.5.1. to protect the security and confidentiality of Personal Data that we process in providing the Services;

29.2.5.2. to protect Personal Data at all times against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, access, or processing; and

29.2.5.3. as required under the relevant Data Protection Laws.

29.2.6. We will cooperate with you to the extent that is reasonably necessary to enable you to adequately discharge your responsibility as a Controller. We will cooperate and provide you with such reasonable assistance as you require to prepare data protection impact assessments to the extent required by Data Protection Laws.

29.2.7. Where necessary, we will give you reasonable access to audit any relevant records or materials we hold regarding the Personal Data that we process on your behalf that are necessary to demonstrate our compliance with our obligations under this clause.

29.2.8. You can delete or remove any data that has been uploaded to your hosting account at your own discretion.

29.3. Our personnel

29.3.1. We will provide training as necessary from time to time to our personnel to ensure that our personnel comply with Data Protection Laws.

29.3.2. Our personnel are bound by confidentiality obligations in respect of access, use or processing of Personal Data.

29.4. Sub-processors

29.4.1. You consent to us engaging Sub-processors to process Personal Data on your behalf. We will execute a written agreement with each Sub-processor that contains terms for the protection of Personal Data that are no less protective than the terms set out in this clause.

29.4.2. You consent to our Sub-processors transferring Personal Data across borders.

29.5. Transfer of Personal Data

29.5.1. We may store Personal Data in data centres located in many countries as part of the Services we provide to you. You consent to us transferring Personal Data across borders.

29.5.2 Although we will assist with the backup and transfer of emails to our server upon registration, we are not responsible for any loss of data as part of the transfer.

29.6. Breaches

29.6.1. We will, as soon as reasonably practicable in the circumstances notify you in writing of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data. We will provide you with a written notice that may describe:

29.6.1.1. the number of individuals concerned; and

29.6.1.2. the number of records involved; and

29.6.1.3. the likely consequences of the breach; and

29.6.1.4. any steps taken to mitigate and address the breach; and

29.6.1.5. a point of contact where you can contact us about the breach.

29.6.2. Descriptions in the notice will provide enough detail to allow you to understand the impact of the breach.

29.6.3. If it is not possible for us to provide any of the information required by this clause at the time of the notice, we will provide such information to you as soon as possible thereafter.

29.6.4. Where possible, we will comply with any reasonable instructions provided by you as soon as reasonably practicable and cooperate with you regarding the data breach.

29.7.Update

29.7.1. The parties agree to any reasonable amendment to this clause to bring it into line with any amendment to or re-enactment of any Data

Protection Laws or any recommendations of the relevant data protection or supervisory authority.

30. General

30.1. Entire agreement: The Agreement constitutes the entire agreement between the parties.

30.2.No Variation: No changes to our Agreement made by you are effective unless in writing and signed by the authorised signatories of both parties.

30.3.Waiver (giving up rights): Any favour we may allow you will not affect (or substitute) any of our rights against you.

30.4. Severability: If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of our Agreement if it does not change its purpose.

30.5. Applicable Law: South African law governs our Agreement.

30.6. Survival: Despite termination of our Agreement, any clause, which, from the context, contemplates on-going rights and obligations of the parties, will survive the termination and continue to be of full force and effect.