



# WDH IT Services

## Website and Development Terms and Conditions

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***PLEASE READ THIS AGREEMENT CAREFULLY.***

*BY SIGNING THE AGREEMENT, THIS CREATES A CONTRACT BETWEEN CUSTOMER AND COMPANY, CONSISTING OF, THE PROPOSAL FOR SERVICES AND THIS USER AGREEMENT AND THAT YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT.*

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## Definitions

**Agreement** means the Project Proposal, Terms and Conditions and any other attached documents.

**Project** means the scope and purpose of the Client's identified usage of the work product as described in the Project Proposal.

**Services** means all services and the work product to be provided to Client by **WDH IT SERVICES** as described and otherwise further defined in the Project Proposal.

**Final Deliverables** means the final versions of Deliverables provided by **WDH IT SERVICES** and accepted by Client.

**Deliverables** means the services and work product specified in the Project Proposal to be delivered by **WDH IT SERVICES** to Client.

**Client Content** means all materials, writing, images or other creative content provided by Client used in preparing or creating the Deliverables.

**Third Party Materials** means proprietary third-party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration.

**WDH IT SERVICES Tools** means all design tools developed and/or used by **WDH IT SERVICES** in performing the Services, including pre-existing and newly developed software including source code, Web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as website design, architecture, layout, navigational and functional elements.



## WDH IT Services

**WDH IT SERVICES** shall perform the services listed under the Scope of Work according to the Work Plan and Milestones schedule.

## Proposal

The terms of this Agreement expire 30 days after being submitted to Client. If this Agreement expires, **WDH IT SERVICES** may modify the Agreement and resubmit it to Client.

## Compensation

### Fees

Client agrees to pay **WDH IT SERVICES** the fees listed in the Project Proposal, including all taxes where applicable.

### Expenses

Client will pay **WDH IT SERVICES** expenses, including but not limited to:

- (a) Incidental and out-of-pocket expenses at cost plus **WDH IT SERVICES** standard markup of 30%;
- (b) Mileage reimbursement, other than normal commuting, at 45p per mile;
- (c) Travel expenses, other than normal commuting, but including airfare and rental vehicles, with client approval.

### Additional Costs

Pricing in the Project Proposal includes only **WDH IT SERVICES** fees. Any other costs, such as hosting, art licensing or photography, will be billed to Client.

### Hosting Final Deliverables

**WDH IT SERVICES** will host the Final Deliverables on **WDH IT SERVICES** web space while the Project is under construction. If the Final Deliverables are not completed by the completion date listed in the Project Proposal, and the delay is not caused by **WDH IT SERVICES**, Client agrees to pay **WDH IT SERVICES** for hosting until the Final Deliverables are moved to Client's server. The charge per month for this will be stipulated in the project proposal as actual cost will vary depending on the hosting requirements for the project.

## PAYMENT

### Payment Schedule

Payment is due when **WDH IT SERVICES** completes each milestone as listed in the Work Plan and Milestones schedule, and Client accepts the Deliverables for that milestone.

### Invoices

All invoices are payable within *14 days* of receipt. Invoices shall list any expenses and additional costs as separate items.

## Late Payment

### Late Fee

A monthly service fee of 1.5 percent, or the maximum allowed by law, is payable on all overdue balances.

### Crediting Late Payments

Payments will be credited to late payments first, then to unpaid balances.

### Collection Expenses

Client shall pay all collection or legal fees caused by late payments.



## Withholding Delivery

**WDH IT SERVICES** will withhold delivery and transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full.

## Withholding License

All grants of any license to use or transfer ownership of any intellectual property rights under this Agreement are conditioned on full payment, including all outstanding Additional Costs, Expenses, Fees, or any other charges.

## Changes to Project Scope

### Change Request

If Client wants to change the Scope of Work after acceptance of this Agreement, Client shall send **WDH IT SERVICES** a written Change Order describing the requested changes in detail. Within *7 days* of receiving a Change Order, **WDH IT SERVICES** will respond with a statement proposing availability, additional fees, changes to delivery dates, and any modification to the Terms and Conditions. **WDH IT SERVICES** will evaluate each Change Order at its standard rate and charges.

### Major Change

If Client requests are at or near *30 percent* of the time required to produce Deliverables, or the value of the Scope of Services, **WDH IT SERVICES** shall be entitled to submit a new and separate Proposal to Client for written approval. **WDH IT SERVICES** shall not begin work on the revised services until receipt of a fully signed revised proposal and any additional fees is provided by the client.

**Minor Change:** If Client requests are not Major Changes, Client will be billed on a time and materials basis at **WDH IT SERVICES's** hourly rate of **£45** per hour. Such charges shall be in addition to all other amounts payable under this Agreement, despite any maximum budget, contract price or final price identified. **WDH IT SERVICES** may extend or modify any delivery schedule or deadlines in the Agreement as may be required by such changes.

**Acceptance/Rejection:** Client will have *14 days* to respond via writing accepting or rejecting the new proposal. If Client rejects the proposal, **WDH IT SERVICES** will not be obligated to perform any services beyond those in the original Agreement.

## Delays

### WDH IT Services Delays

**WDH IT SERVICES** shall use all reasonable efforts to meet the Work Plan and Milestones delivery schedule. **WDH IT SERVICES** may extend the due date for any Deliverable by giving written notice to Client. The total of all extensions shall not exceed *30 days*.

**Client Delays:** Client shall use all reasonable efforts to provide needed information, materials and approvals. Any delay by Client will result in a day-for-day extension of the due date for all Deliverables.

**General Delays:** Any delay caused by conditions beyond the reasonable control of the parties shall not be considered a breach and will result in a day-for-day extension any performance due. Each party shall use reasonable efforts to notify the other party, in writing, of a delay. Conditions beyond the reasonable control of the parties include, but are not limited to, natural disasters, acts of government after the date of agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war, terrorism and epidemics.



## Evaluation and Acceptance

### Testing

WDH IT SERVICES will test and correct deliverables using commercially reasonable efforts before providing deliverables to Client.

### Approval Periods

Client shall, within 7 business days after receiving each Deliverable, notify **WDH IT SERVICES** in writing of any failure to comply with the specification of the Project Proposal or of any other objections, corrections or changes required. **WDH IT SERVICES** shall, within 7 business days of receiving Client's notification, correct and submit a revised deliverable to Client. Client shall, within 7 business days of receiving a revised deliverable, either approve the corrected version or make further changes. If after 3 corrections by **WDH IT SERVICES**, Client finds the deliverables are not acceptable, Client may terminate this agreement subject to the termination clauses of this Agreement. If Client fails to provide approval or comments during any approval period, those deliverables will be considered approved and accepted. All objections, corrections and changes shall be subject to the terms and conditions of this Agreement.

### Client Responsibilities

Client acknowledges that it is responsible for performing the following in a reasonable and timely manner:

- a) Provide Client Content in a form suitable for use in the deliverables without further preparation by **WDH IT SERVICES**, unless otherwise specified in the Project Proposal;
- b) Proofread all Deliverables. Client will be charged for correcting errors after the acceptance of any deliverable;
- c) Make decisions regarding other parties.

## Accreditation and Promotion

### Accreditation

**WDH IT SERVICES** shall be entitled to place accreditation, as a hyperlink or otherwise, in the form, size and location as incorporated by **WDH IT SERVICES** in the deliverables.

### Promotion

**WDH IT SERVICES** retains the right to reproduce, publish and display the deliverables in **WDH IT SERVICES's** portfolios and websites, in galleries, and other media or exhibits for the purposes of recognition of professional advancement, and to be credited with authorship of the deliverables in connection with such uses.

### Promotional Approval

Either party, subject to the other's reasonable approval, may describe its role in the project on its website and in other promotional and marketing materials, and, if not expressly objected to, include a link to the other party's website.

## Confidential Information

Client's "Confidential Information" includes information that **WDH IT SERVICES** should reasonably believe to be confidential. **WDH IT SERVICES's** "Confidential Information" includes the source code of any **WDH IT SERVICES** Tools. All material considered confidential by either party shall be designated as confidential. Confidential Information shall not be disclosed to third parties and shall only be used as needed to perform this Agreement.

Confidential Information shall not include any information that is already known by the recipient, becomes publicly known through no fault of the recipient, or is received from a third party without a restriction on disclosure



## Relationship of the parties

### Independent Contractor

**WDH IT SERVICES** is an independent contractor. **WDH IT SERVICES** shall determine, in its sole discretion, the manner and means by which the Services are accomplished. No agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. **WDH IT SERVICES** and the work product or Deliverables prepared by **WDH IT SERVICES** shall not be deemed a work for hire as defined under Copyright Law. All rights granted to Client are contractual in nature and are expressly defined by this Agreement.

### Design Agents

**WDH IT SERVICES** shall be allowed to use third party's as independent contractors in connection with the Services ("Design Agents"). **WDH IT SERVICES** shall remain fully responsible for Design Agents' compliance with this Agreement.

### No Exclusivity

This Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by **WDH IT SERVICES**, and **WDH IT SERVICES** shall be entitled to offer and provide services to others, solicit other clients and otherwise advertise the services offered.

## Representations and Warranties

### By Client

Client represents and warrants to **WDH IT SERVICES** that:

- a) To the best of Client's knowledge, use of the Client Content does not infringe the rights of any third party;
- b) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials;
- c) Client will obtain all necessary and appropriate rights and licenses to grant license to **WDH IT SERVICES** to use Third Party Materials.

### By WDH IT SERVICES

**WDH IT SERVICES** represents and warranty to Client that:

- a) **WDH IT SERVICES** will provide the Services identified in the Agreement in a professional and workmanlike manner;
- b) **WDH IT SERVICES** shall secure all necessary rights, title, and interest in and to the Final Deliverables, including **WDH IT SERVICES** Tools, sufficient for **WDH IT SERVICES** to grant the intellectual property rights provided in this Agreement;
- c) To the best of **WDH IT SERVICES's** knowledge, the Deliverables will not violate the rights of any third parties;

If Client or third parties modify the Deliverables or use the Deliverables outside of the scope or purpose of this Agreement, all representations and warranties of **WDH IT SERVICES** shall be void.

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS AGREEMENT, **WDH IT SERVICES** MAKES NO WARRANTIES WHATSOEVER. **WDH IT SERVICES** EXPLICITLY DISCLAIMS ANY OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR COMPLIANCE WITH LAWS OR GOVERNMENT RULES OR REGULATIONS APPLICABLE TO THE PROJECT.





## Indemnification and Liability

### By Client

Client shall indemnify **WDH IT SERVICES** from any and all damages, liabilities, costs, losses, expenses or attorney fees arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. **WDH IT SERVICES** shall promptly notify Client in writing of any third party claim or suit. Client shall have the right to fully control the defense and any settlement of such claim or suit.

### By WDH IT SERVICES

In the case of a third-party lawsuit or proceeding based on a claim that Deliverables breach the third party's intellectual property rights, and it is determined that such infringement has occurred, **WDH IT SERVICES** may at its own expense, replace any infringing content with non-infringing content.

### Limitation of Liability

THE SERVICES AND THE WORK PRODUCT OF **WDH IT SERVICES** ARE SOLD "AS IS." IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF **WDH IT SERVICES**, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES ("WDH IT SERVICES PARTIES"), TO CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND CLIENT'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE NET PROFIT OF **WDH IT SERVICES** FOR THE WORK PRODUCT IN DISPUTE. IN NO EVENT SHALL **WDH IT SERVICES** BE LIABLE FOR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MATERIALS OR THE SERVICES PROVIDED BY **WDH IT SERVICES**, EVEN IF **WDH IT SERVICES** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## Term and Termination

### Term

This agreement shall begin when both parties sign an accompanying project proposal document and shall continue until all Services are complete and delivered, or until the Agreement is Terminated.

### Termination for Cause

Either party may terminate this agreement at any time, on 21 days prior written notice if the other party breaches any of its material responsibilities or obligations under this Agreement and fails to cure that breach during that 21-day period.

### Termination for Insolvency

Either party may terminate this agreement at any time, on written notice to the other party, if the other party ceases to conduct business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it.

### Termination by Mutual Agreement

This agreement may be terminated by the mutual agreement of the parties.

### Termination for Convenience

Either party may terminate this agreement at any time and for any reason on 21 days prior written notice to the other party. If Client terminates the Agreement under this section, **WDH IT SERVICES** shall, at Client's reasonable discretion, complete any work assigned or scheduled during the notice period in accordance with the terms and conditions of this Agreement.

### Termination Fees

In the event of termination, Client shall pay **WDH IT SERVICES** for the Services performed through the date of termination in the amount of a prorated portion of the fees due. Client shall pay all Expenses, Fees, and Additional Costs incurred through the date of termination.



## Intellectual Property

If Client terminates and on full payment of compensation, **WDH IT SERVICES** grants Client right and title as provided by this Agreement with respect to those Deliverables provided and accepted by Client as of the date of termination.

## Confidential Information

On expiration or termination of this Agreement:

- (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and
- (b) all rights and obligations regarding Confidential Information shall survive.

## Rights to Final Product

### License

WDH IT SERVICES grants to Client a non-exclusive, perpetual and worldwide license to use and display the Final Deliverables in accordance with this Agreement. The rights granted to Client are for use of the Final Deliverables in its original form only. Client may not change, create derivative works or extract portions of the Final Deliverables. Client can waive the right to obtain license and have full authority to use the deliverables in any way they please. Upon paying a fixed fee of 30% of the total project cost and receipt of signed agreement client will be granted unlicensed use and full ownership of all deliverables. Client can request this at any time before or after delivery of final product.

### Liquidation for Unlicensed Use

Additional use of any Deliverables by Client outside the scope of the license granted above requires additional fees. **WDH IT SERVICES** shall be entitled to further compensation equal to 50% percent of the total original Project fee unless otherwise agreed in writing by both parties. In the event of non-payment, **WDH IT SERVICES** shall be entitled to pursue all remedies under law and equity.

## Rights to Deliverables

### Client Content

Client Content is the exclusive property of the Client. Client grants **WDH IT SERVICES** a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the Client Content solely in connection with **WDH IT SERVICES's** performance of the Services and limited promotional uses of the Deliverables as authorised in this Agreement.

### Preliminary Works

**WDH IT SERVICES** retains all rights in and to all Preliminary Works. Client shall return all Preliminary Works to **WDH IT SERVICES** within thirty (30) days of completion of the Services.

**WDH IT SERVICES Tools.** All WDH IT SERVICES Tools are and shall remain the exclusive property of **WDH IT SERVICES**. **WDH IT SERVICES** grants Client a nonexclusive, nontransferable, perpetual, worldwide license to use the **WDH IT SERVICES Tools** solely to the extent necessary with the Final Deliverables for the Project.

## Support Services

### Warranty Period

During the first 3 months following expiration of this Agreement, WDH IT SERVICES shall provide up to 3 hours of Support Services at no additional cost to Client. Support Services means commercially reasonable technical support and assistance to maintain and update the Deliverables, including correcting any errors or Deficiencies. Requests for additional support will be billed according to the support requested and as agreed between the client and **WDH IT SERVICES** as specified in a subsequent signed proposal agreement.

### Maintenance Period

After the Warranty Period expires and at Client's option, **WDH IT SERVICES** will provide Support Services as agreed between the client and **WDH IT SERVICES** as specified in a subsequent signed proposal agreement.



## No Enhancements

The inclusive support services in the Warranty Period where no additional charge is required does not include enhancements to the Project or other services outside the scope of the Proposal.

## Enhancements

During the Maintenance Period, Client may request that **WDH IT SERVICES** develop enhancements to the Deliverables. **WDH IT SERVICES** shall exercise commercially reasonable efforts to prioritise **WDH IT SERVICES's** resources to create such enhancements. Client understands **WDH IT SERVICES** may have preexisting obligations that may delay requested enhancements. **WDH IT SERVICES** shall provide any enhancements as agreed between the client and **WDH IT SERVICES** as specified in a subsequent signed proposal agreement at an additional cost.

**Alterations.** Alteration of any Deliverable is prohibited without the express permission of **WDH IT SERVICES**. **WDH IT SERVICES** will be given the first opportunity to make the required alterations. Unauthorised alterations shall constitute additional use and will be billed accordingly.

## Dispute Resolution

### Negotiation

Parties agree to attempt to resolve any dispute by negotiation between the parties.

### Arbitration/Mediation

If parties are unable to resolve the dispute by negotiation, either party may start mediation and/or binding arbitration in a forum mutually agreed to by the parties.

### Litigation

In all other circumstances, the parties specifically consent to the courts involvement to determine resolution of the dispute.

### Legal Fees

The prevailing party shall be entitled to recover its legal fees and costs in any dispute resolved by legal procedure.

## General

### Modification/Waiver

Modifications to this Agreement must be in writing and signed by both parties. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

### Notices

All notices under this Agreement shall be given in writing either by:

- (a) Email, with return confirmation of receipt;
- (b) Certified or Registered mail, with return receipt requested.

Notice will be effective when received, or in the case of email or fax, on confirmation of receipt.

### No Assignment

Rights or obligations under this Agreement shall not be transferred, assigned or encumbered without the prior written consent of the other party.

### Governing Law

This Agreement shall be governed by UK law.



### Severability

If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Where possible the invalid or unenforceable provision shall be interpreted in such manner as to be effective and valid under applicable law.

### Headings

Headings used in this Agreement are for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of this Agreement, and shall not have any legal effect.

### Complete Agreement

This Agreement is the entire understanding of the parties and supersedes all prior understandings and documents relating to the subject matter.

**These Terms and Conditions were most recently updated on 12 January 2018**