

CYBER WARE LIMITED
Web Services Terms

Web Services Terms

These Web Services Terms contain the terms and conditions upon which we provide our services.

We will ask you to agree to these Web Services Terms, and one or more Statements of Work, before we begin working with you.

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:

- (a) these Web Services Terms;
- (b) any Statements of Work agreed between the parties;
- (c) the Schedules to these Web Services Terms insofar as applied by a Statement of Work; and
- (d) any amendments to the Agreement 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 Cyber Ware Ltd under or in relation to the Agreement (as set out in the Schedules and Statements of Work);

"Company" means Cyber Ware Ltd, a limited company incorporated in England and Wales (registration number 3160139) having its registered office at Litton House, Saville Road, Westwood, Peterborough PE3 7PR;

"Confidential Information" means:

- (a) any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as "confidential", described as "confidential" or reasonably understood to be confidential.

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

"Customer" means the company, firm or person specified in the Statement of Work;

"Effective Date" means the date of execution or acceptance of this Agreement;

"Force Majeure Event" means an event, or a series of related events,

that is outside the reasonable control of the party affected including

- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
- (f) fire, explosion or accidental damage;
- (g) extreme adverse weather conditions;
- (h) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
- (i) any labour dispute, including but not limited to strikes, industrial action or lockouts;
- (j) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (k) interruption, non-performance or failure of utility service(s), including but not limited to electric power, telecommunications, gas or water.
- (l) Failures of or problems with the internet or a part of the internet, that are not directly under the control of the supplier.
- (m) Hacker attacks, virus or other malicious software attacks or infections.

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service 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.

"Minimum Term" means a minimum period of 1 Year starting on the Effective Date or where explicitly stated within the attached schedules.

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

"Schedules" means the schedules attached to the Web Services Terms;

"Services" means the services provided under the Agreement as specified in the Schedules and Statements of Work;

"Statement of Work" means a statement of work signed by each of the parties specifying the scope of the Services and other matters relating to the Agreement;

"Term" means the term of the Agreement; and

"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; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

2. TERM

the Minimum Term together with such period as shall continue thereafter indefinitely unless and until this Agreement is terminated by either party in accordance with clause 13 hereof.

3. Services

Cyber Ware Ltd will provide to the Customer during the Term the Services specified in the applicable Statements of Work.

4. Customer obligations

- 4.1 The Customer will provide Cyber Ware Ltd with all co-operation, information and documentation reasonably required for the provision of the Services, and the Customer will be responsible for procuring any third party co-operation reasonably required for the provision of the Services.
- 4.2 Save as expressly provided in the Agreement, 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.
- 4.3 It is the Customer's responsibility to keep any passwords relating to the Services confidential, and to change such passwords on a regular basis. The Customer will notify Cyber Ware Ltd immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.
- 4.4 The Services are provided to the Customer only, and the Customer must not resell or otherwise provide or make available the Services to any third party.
- 4.5 The Customer further acknowledges that they shall be responsible for performing the following in a timely manner:
 - (a) coordination of any decision-making with parties other than Cyber Ware Ltd;
 - (b) provision of Customer Content in a form and quality suitable for reproduction or incorporation into the Deliverables without further preparation , unless otherwise expressly provided in the Proposal ; and
 - (c) provision of all copy (written materials) intended for incorporation into the deliverables.

- (d) Make known any concerns and provide Cyber Ware Ltd with prompt and clearly explained written feedback relating to any complaints, reviews, queries or concerns that it may have relating to agreed work or services and provide the opportunity to correct any defects, make enhancements, or carry out re-designs that may be reasonably requested by the customer.
- (e) final proofreading and in the event that Customer has approved Deliverables but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product, Customer shall incur the cost of correcting such errors
- (f) co-operate in a timely fashion with Cyber Ware Ltd in all matters relating to the Agreement and appoint a project manager (Customer's Project Manager) who shall have the authority contractually to bind the Customer on matters relating to the Services. The Customer shall appoint the Customer Project Manager and notify Cyber Ware Ltd of the name and contact details of such person in writing upon or in any event no later than two (2) Business Days after the Commencement Date.
- (g) The Customer shall use all reasonable endeavours to ensure that the same person acts as the Customer Project Manager throughout the term of this agreement, but may replace him from time to time where reasonably necessary in the interests of the Customers business, provided that it shall promptly (within two (2) Business Days of such replacement) notify Supplier in writing of the identity of such replacement persons;
- (h) provide, for Cyber Ware Ltd, its agents, subcontractors, consultants and employees, in a timely manner data and other facilities as reasonably required by Cyber Ware Ltd (or any of the aforementioned).
- (i) Cyber Ware Ltd shall not be responsible or in breach of the terms of this Agreement in respect of any failure to perform its obligations hereunder (including any of its obligations under the Service Level Agreements) which results from Cyber Ware Ltd being unable to given any such access, materials or feedback when required;
- (j) provide, in a timely manner, such In-put Material and other information, such as written feedback, as Cyber Ware Ltd may reasonably require, and ensure that it is accurate in all material respects;
- (k) be responsible (at its own cost) for preparing and maintaining the relevant copy and information in accordance with all applicable laws, before and during this agreement.

- (l) obtain and maintain all necessary licences and consents and comply with all relevant legislation (including without limitation any licence(s), consent(s), or other authorisation(s) required by the Customer from any In-Put Material, such as copy, images or artwork.
- (m) Carry out interim and final acceptance testing and written feedback, and or guidance relating to and as required by Cyber Ware Ltd in order to enable it deliver the service.
- (n) Failure to comply with the above may be deemed by Cyber Ware Ltd to be a material breach of this agreement.

5. Use of the Services

- 5.1 The Customer must not use any of the Services:
- (a) to host, store, send, relay or process any:
 - (i) material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or other third party rights, or may give rise to any form of legal action against Cyber Ware Ltd or the Customer or any third party;
 - (ii) pornographic or lewd material; or
 - (iii) messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail;
 - (b) for any purpose which is unlawful, fraudulent, or infringes any third party rights;
 - (c) in any way which may put Cyber Ware Ltd in breach of a contractual or other obligation owed by the Customer to any internet service provider.
- 5.2 The Customer must ensure that all materials provided to Cyber Ware Ltd by or on behalf of the Customer in connection with the Agreement, and the use of those materials by Cyber Ware Ltd in accordance with the terms of the Agreement will not infringe any person's Intellectual Property Rights or other legal rights, will not breach any applicable laws or regulations, and will not give rise to a cause of action against any person in any jurisdiction.
- 5.3 Where Cyber Ware Ltd reasonably suspects that there has been a breach of the provisions of this Clause [5], Cyber Ware Ltd may:
- (a) delete or amend the relevant materials; and/or
 - (b) suspend any or all of the Services and/or the Customer's access to any or all Services while it investigates the matter.
- 5.4 Any breach by the Customer of this Clause [5] will be deemed to be a material breach of the Agreement for the purposes of Clause [13].

6. Charges and payment

- 6.1 Cyber Ware Ltd will issue invoices for the Charges to the Customer in accordance with the provisions of the Schedules and Statement(s) of Work.
- 6.2 The Customer will pay the Charges to Cyber Ware Ltd:
- (a) on or before the dates set out in the relevant Schedules or Statement(s) of Work; or
 - (b) where no such dates are set out in the relevant Schedules or Statement(s) of Work, within 30 days of the date of issue of an invoice in accordance with Clause [6.1].
- 6.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 6.4 Charges must be paid by debit or credit card, direct debit, bank transfer or by cheque (using such payment details as are notified by Cyber Ware Ltd to the Customer from time to time).
- 6.5 If the Customer does not pay any amount properly due to Cyber Ware Ltd under or in connection with the Agreement, Cyber Ware Ltd may:
- (a) charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of National Westminster 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.
- 6.6 Cyber Ware Ltd will:
- (a) collect and collate evidence of all expenses passed on to the Customer through the Charges;
 - (b) retain such evidence during the Term and for a period of 12 months following the end of the Term; and
- 6.7 Cyber Ware Ltd may vary the Charges on and from any anniversary of the Effective Date by giving to the Customer written notice of the variation.

7. Warranties

- 7.1 The Customer warrants to Cyber Ware Ltd that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 7.2 Cyber Ware Ltd 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.
- 7.3 All of the parties' obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

8. Indemnity

The Customer hereby indemnifies and undertakes to keep indemnified Cyber Ware Ltd against all liabilities, losses, costs, expenses (including legal expenses and amounts paid upon advice in settlement of any legal action) arising out of or in connection with any breach by the Customer of any term of the Agreement.

9. Limitations of liability

- 9.1 Nothing in the Agreement will exclude or limit the liability of either party for:
- (a) death or personal injury caused by that party's negligence;
 - (b) fraud or fraudulent misrepresentation on the part of that party; or
 - (c) any other liability which may not be excluded or limited under applicable law.
- 9.2 Subject to Clause [9.1], Cyber Ware Ltd's liability under or in connection with the Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:
- (a) Cyber Ware Ltd will not be liable for any:
 - (i) loss of profits, income or anticipated savings,
 - (ii) loss or corruption of any data, database or software,
 - (iii) reputational damage or damage to goodwill;
 - (iv) loss of any commercial opportunity, or
 - (v) indirect, special or consequential loss or damage;
 - (b) Cyber Ware Ltd will not be liable for any losses arising out of a Force Majeure Event; and

- (c) Cyber Ware Ltd's liability in relation to any event or series of related events will in no circumstances exceed the greater of:
 - (i) £100,000.00 ; and
 - (ii) the total amount paid (or, if greater, payable) by the Customer to Cyber Ware Ltd under the Agreement during the 12 month period immediately preceding the event or series of events.

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

11. Confidentiality

- 11.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause [11].
- 11.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.
- 11.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
- 11.4 These obligations of confidentiality will not apply to Confidential Information that:
 - (a) has been published or is known to the public (other than as a result of a breach of the Agreement);
 - (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
 - (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

12. Publicity

Neither party will make any public disclosure relating to the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party.

13. Termination

13.1 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 later of:

- (a) the end of the Minimum Term; and
- (b) the end of any minimum period specified in any Schedule or Statement of Work.

13.2 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 90 days of receipt of a written notice requiring it to do so; or
- (b) persistently breaches the terms of the Agreement.

13.3 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);

- (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.

14. Effects of termination

- 14.1 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.
- 14.2 Subject to Clause [14.1], upon termination all the provisions of the Agreement will cease to have effect, save that:
- (a) the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 6.5, 6.6, 6.7, 8, 9, 11, 14, 15 and 17]; and
 - (b) the provisions of the Schedules and Statements of Work expressed to survive and continue to have effect will do so (in accordance with their terms or otherwise indefinitely).
- 14.3 If the Agreement is terminated under Clause [13.1], or by the Customer under Clause [13.2] or [13.3] (but not in any other case) the Customer will be entitled to a refund of any Charges paid by the Customer to Cyber Ware Ltd in respect of any Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to Cyber Ware Ltd (such amount to be calculated by Cyber Ware Ltd using any reasonable methodology).
- 14.4 Save as provided in Clause [14.3], 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 Cyber Ware Ltd.

15. Non-solicitation

Neither party will, without the other party's prior written consent, during the Term or for a period of 6 months after the end of the Term, directly or indirectly, either for itself, himself, herself or for any other person, firm or company:

- (a) solicit the business of any person, firm, company or otherwise who is or was a client, customer, supplier, sub-contractor or agent of the other party; or
- (b) engage, employ or otherwise solicit for employment any employee or contractor of the other party involved in the performance of the Agreement.

16. Notices

- 16.1 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, sent by pre-paid first class post, or sent by fax, for the attention of the relevant person, and to the relevant address, fax number given in the applicable Statement of Work (or as notified by one party to the other in accordance with this Clause).
- 16.2 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 first class post, 48 hours after posting;
and
 - (c) where the notice is sent by fax at the time of the transmission (providing the sending party retains written evidence of the transmission).

17. General

- 17.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 17.2 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).
- 17.3 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 17.4 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 17.5 Cyber Ware Ltd may freely assign Its rights and obligations under the Agreement without the Customer's consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement.
- 17.6 Cyber Ware Ltd may subcontract any of its obligations under the Agreement to any third party.
- 17.7 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 17.8 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.
- 17.9 Subject to Clause [9.1]:
 - (a) the Agreement will constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
 - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement; and
 - (c) neither party will have any liability other than pursuant to the express terms of the Agreement.

17.10 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.