



## Terms and Conditions of Business

version 2.0 valid from September 14<sup>th</sup> 2017

All Users of services provided by Digitav Ltd, by use of such services, accept the terms of business set out in the form of service agreement which follows, irrespective of the mode or manner of ordering employed by the User when ordering the services.

The following constitute the terms and conditions under which Digitav Ltd trades and supplies its services and related products. These conditions, in conjunction with the details as shown on the Digitav Ltd Quote, online order or proposal represent the totality of the agreement and form the Contract between Digitav Ltd and the User.

Any agreed variation or alteration to part of these terms and conditions are annexed to this Contract will not Invalidate any remainder or the whole. Digitav Ltd is entitled to suspend services if the User does not adhere to any or several conditions of his Contract.

In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Client or otherwise), these Terms and Conditions shall prevail unless expressly otherwise agreed by Digitav Ltd in writing.

### 1. DEFINITION

In this Contract unless the context otherwise requires:

- 1.1 "Service" or "Services" means Website Design, Website Development, Software Development, E-commerce facilities, Mobile App Development, Software Platforms, Business Systems, Databases, domain name registration, Virtual Server hosting, bandwidth provision, email and any other service or facility provided by Digitav Ltd subject to and including clauses 1.13 and 1.14. "Advert" refers to the creation of an advert for third parties to be used within a service see clauses 15 and 16 and to advertise the third party's own business.
- 1.2 "Server" means the computer server equipment operated by us or provided by you or a third party in connection with the provision of the Services
- 1.3 "Virtual Server" means the area on the Server allocated by us to you for use by you as a site on the Internet;
- 1.4 "Digitav Ltd" or "we" mean Digitav Ltd Digital Media Software Developers
- 1.5 "Contract" means the agreement between Digitav Ltd and the User incorporating these conditions, the Digitav Ltd Quote, online order forms and or Proposals and Digitav Ltd's published charges for the provision of its services; References to "Agreement" or "Licence" shall, where the context admits, be read as referring to the Contract.
- 1.6 "Charges" means the charges as agreed on the Quote, online order forms or Proposals and Digitav Ltd's latest published prices for products and services requested or incurred by you.
- 1.7 "Bandwidth" means the allocated transmission capacity, measured in bits per second, of the network connection as specified in the Contract;
- 1.8 "Data transfer" means all traffic that passes through Virtual Server or Server including specifically but not exclusively web traffic, email, FTP transfers, database information and any telnet session data;
- 1.9 "Site" means the premises or location at which Service is or is to be provided under the Contract;
- 1.10 "Internet" means the global data network comprising Internet connected networks using TCP/IP (Transmission Control Protocol/Intermit Protocol)
- 1.11 "Internet Standards" means the protocols and standards defined in the Internet Standards Documents produced by <https://www.ietf.org/> and <https://www.w3.org> and any future such protocols and standards as appropriate



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- 1.12 "Licence" means the contract with Digitav Ltd to use the Services of Digitav Ltd for the specified time subject to the initial contract term agreed
- 1.13 "Bespoke Software" or "Server Side Code" or "Source Code" specifically means code that is written by Digitav Ltd and operates solely on the Digitav Server. Code that carries out all functions of all Services of Digitav Ltd
- 1.14 "Alternate Software" means any software that is commercially or freely available from sources other than Digitav Ltd but can be utilised to provide Services by Digitav
- 1.15 "Web Forms" means web pages containing forms that allows Users to make changes to the content, manipulate data and make any other changes to the Server Side Code to preserve the security, integrity and copyright of Digitav Ltd's Services.
- 1.16 "User" or "You" means you, the Customer, the Client, or any person who makes use of the services through you or on your behalf;
- 1.17 "Initial Contract Term" mean's the initial period of service as specified in clause 4;
- 1.18 "Extension Term" means each extended period of twelve months after the Initial Contract Term.
- 1.19 "Live" or "to go live" means to publish the agreed service

## 2. VIRTUAL SERVER HOSTING, SERVER HOSTING and EMAIL

- 2.1. We make no representation and give no warranty as the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss of damage to any data stored on the Server.
- 2.2. The User shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server.
- 2.3. The User represent, undertake and warrant to us that you will use the Virtual Server or Server allocated to you only for lawful purposes. You represent, warrant and undertake to us that
  - 2.3.1 The User will not use the Virtual Server or Server in any manner, which Infringes any law or regulation, or which infringes the rights of any third party, nor will you authorise or permit any other person to do so;
  - 2.3.2 The User will not post, link to transmit
    - (a) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;
    - (b) any material containing a virus or other hostile computer program;
    - (c) any material which constitutes or encourages the commission, of a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.
    - (d) Your attention is drawn to the provisions of subclause 6.3 below
- 2.4 The User shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information.



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- 2.5 The User shall observe the procedures which we may from time prescribe and shall make no use of the Virtual Server or Server, which is detrimental to our other customers.
- 2.6 The User shall procure that all email is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.
- 2.7 In the case of an individual User, you warrant that you are at least 18 years of age and if the User is a company you warrant that the Services will not be used by anyone under the age of 18 years.
- 2.8 Any access to other networks connected to Digitav Ltd must comply with the rules appropriate for those other networks.
- 2.9 While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hacker or from corruption by virus and we shall be under no liability for non-receipt or misrouting of email or any other failure of email or damage to data or operations.

### 3. Digitav Ltd Service

- 3.1 Connection to the Digitav Ltd Service is via the Internet which is fixed telecommunications link. This Contract, unless specifically stated on the Quote and or Invoice, does not include the provision of telecommunications services necessary for connection to the Digitav Ltd Service
- 3.2 Requests relating to the provision of Service are, unless otherwise agreed to be made or confirmed in writing by email.
- 3.3 Digitav Ltd will use all reasonable endeavours to adhere to any dates proposed by either Digitav Ltd or you for the provision of Service; however, any such date to be treated as an estimate only and Digitav Ltd does not accept liability for failure to meet such dates.
- 3.4 Digitav Ltd will use reasonable endeavours to provide a reliable Service; however, it is not practicable to provide Service free of faults and Digitav Ltd does not undertake to do so. In the event of a fault in Service, you must report the fault by telephone or email to Digitav Ltd at the appropriate numbers or addresses or other such numbers or addresses that Digitav Ltd may from time to time provide. Upon receipt of the fault report, Digitav Ltd will take all proper steps without undue delay to correct the fault. Digitav Ltd shall not, in any event, be liable for interruptions of Service or downtime of a Server.
- 3.5 Digitav Ltd may:
  - 3.5.1 temporarily suspend for the purpose of repair, maintenance or improvement, part of all Service, without notice. Digitav Ltd undertake to use reasonable endeavours to restore Service as soon as practicable after such suspension.
  - 3.5.2 give update instructions regarding the use of Service which in Digitav Ltd's reasonable opinion are necessary in the interests of safety, or to maintain or improve the quality of Service to Digitav Ltd's customers. Any such instructions shall, whilst they are in force, be deemed to form part of this Contract.
  - 3.5.3 vary the technical specification of Service for operational reasons
- 3.6 Digitav Ltd will use all reasonable endeavours to provide Services and site functionality that are as accessible to site users as possible; however, it is not practicable to deliver a completely multi browser / cross platform service free of faults and Digitav Ltd does not undertake to do so. Digitav Ltd accepts no liability or responsibility if this is the case now or in the future.



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3.7 Internet browser compatibility limitations: Digitav Ltd deliver services that operate on the primary internet browsers which make up majority of the internet browsers used. Digitav Ltd will endeavour to ensure that any developed/designed site or application will function correctly on the server it is initially installed on and that it will function correctly when viewed with the current web browsing software from Microsoft, Google Chrome, Safari and Firefox browser to an acceptable level. Digitav Ltd can offer no guarantees of correct function with all browser software. Websites are designed and developed to operate with the primary Internet browsers at the time of publishing.

### 4. COMMENCEMENT, INITIAL PERIOD OF SERVICE and RENEWAL

4.1 The commencement of services will be agreed in advance and stated either in the quote, on any online order form, on the invoice or contract and after a deposit or the full amount has been paid subject to agreement. The initial period of service will be for 12 months subject to licence agreements unless agreed otherwise. The contract will automatically renew as an Extended Term after 12 months and subject to the conditions in clause 9 and 10 of this contract.

4.2 Digitav Ltd reserves the right to increase the contract fee on renewal (annually or as stated in any quote, online order form or invoice)) by the percentage specified in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) with a minimum rise of 0.5% of the contract value and subject to clause 7.3.

### 5. DATA USAGE AND BANDWIDTH UTILISATION

The data and bandwidth usage is estimated and included at the time of any quote and is set at a significantly higher level than would be needed to allow for business growth. Higher limits can be discussed as and when necessary.

### 6. CONTENT and MISUSE

6.1 The User will use all reasonable endeavours to ensure that the Digitav Ltd Service is used or includes content that conforms to the laws of this country and will not knowingly permit any illegal use or such use that will bring Digitav Ltd into disrepute.

6.2 The User must not, nor must any other person, use the Service: to send or receive any material which is offensive, abusive, indecent, obscene, pornographic or menacing, or in breach of confidence, copyright, privacy or any other rights, to cause annoyance, inconvenience or needless anxiety, or in breach of any provisions as contained within clauses 2 and 3 of this Contract, or other than in conformance with the acceptable use policies of any connected networks and internet standards.

6.3 Digitav Ltd may discontinue Service immediately if the User is found to have carried out or permitted any illegal or use that is prohibited by these terms. If Digitav Ltd suspends Service for contravention of the above conditions of this clause, Digitav Ltd can refuse to restore Service until it receives an acceptable assurance from the User that there will be no further contravention.

### 7. CHARGES AND PAYMENT

7.1 All payments must be in UK Pounds Sterling. If your standing order, Direct Debit or card payment is returned by the bank as unpaid for any reason, you will be liable for a charge of £25.

7.2 All charges payable by you for the Services shall be in accordance with the scale of charges and rates published from time to time by us on our web site, online ordering system or on our quote and shall be due and payable within 7 days of our Service provision. Charges are exclusive of 'Value Added Tax', which shall, if applicable, be paid additionally by you at the rate prescribed by law on submission by us of a proper VAT invoice.



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- 7.3 The User acknowledges that where our Services are provided using facilities provided to us by third parties: Digitav Ltd shall have the right, subject to 14 days prior written notice to you, to increase our Charges at any time during the Initial Contract Term or any Extension Term, whether to reflect increase costs to us from such third parties or otherwise. However, if such increase exceeds 10% of the Charge in question prior to such notice you shall be entitled to terminate the Contract by written notice to us given by you within 7 days after service of our notice of increase to you. If you do so terminate, you will remain liable for all Charges (at the previous rate up to the date the Contract ends and for all materials and subcontract work which Digitav Ltd has ordered or contracts for and which cannot be cancelled without cost to Digitav Ltd.
- 7.4 Payment for all services shall be made by the client not later than 7 days from the date of Digitav Ltd's invoice and in the event of any payment not being made by the due date, Digitav Ltd shall, without prejudice with its rights to recover any monies owing to it, not be obliged to proceed with nor to deliver to the Client any further service or work. Any ongoing services i.e. Web and Email hosting will cease to be provided if payment is not received in full within 3 days of the invoice date, as supplied by Digitav Ltd.
- 7.5 Late payment charges of 8% above the Bank of England Base Rate and a charge of £50 per invoice will be made for late payment of invoices, as described in the Late Payment of Commercial Debts (Interest) Act 1998. There are no charges for credit card, debit card or BACS payments. If suspension of service occurs for any reason you will be liable for a reconnection charge of £250.
- 7.6 Digitav Ltd reserves the right to charge a deposit in advance of services provided and interim or staged payments to be arranged during any development work. The time and schedule of payments will be included either in the quote, on an online order form or on the invoice. Full payment to be made before the Service goes live.
- 8. DEFAULT**
- 8.1 If you do not pay the charges in accordance with the provisions of clause 7 of this Contract, or break this Contract in any other way, or are subject to bankruptcy or insolvency proceedings (see sub clause 8.2) Digitav Ltd can (without prejudicing, losing or reducing any other right or remedy) suspend Service, wholly or partially, without notice (but the User remains liable during the suspension to pay charges for Service), or terminate this Contract by immediate notice, without prejudice to Digitav Ltd's pre-existing rights.
- 8.2 Bankruptcy or insolvency proceeding means bankruptcy proceedings or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress diligence or seizure: or if the User is a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.
- 8.3 The User continues to be liable to pay all charges, which are due for Service during any period in which you do not comply with this Contract.
- 8.4 On termination of this Agreement or suspension of the Services we shall be entitled immediately to block your Server and to remove all data located on it. We shall be entitled to delete all such data but we may at our discretion hold such data for such period as we may decide, to allow you to collect it at your expense, subject to payment in full of any amounts withstanding and payable to us. We shall further be entitled to post such notice in respect of the non-availability of your Service as we think fit.
- 8.5 For so long as any sum due to Digitav Ltd hereunder is unpaid or any other amount is due to properly claimed by Digitav Ltd from you for services or goods supplied or for any other reason, whether pursuant to these terms or otherwise, Digitav Ltd shall be entitled to retain any property owned by you or lawfully in your custody or possession and which is held by Digitav Ltd or by its agents until such time as all amounts due to Digitav Ltd are paid and/or any issue between you and Digitav Ltd is determined.



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8.6 If Digitav Ltd waives a breach of Contract by you, that waiver is limited to the breach. Any delay by Digitav Ltd in acting upon a breach is not to be regarded as a waiver.

### 9. TERMINATION OF SERVICE

9.1 Service may be terminated by either party on giving at least 30 days notice to the other expiring on the last day of the Initial or Extended Contract Term. If Digitav Ltd gives notice you shall pay all charges up to the expiry of the notice. If you give notice, you shall pay all charges as provided in sub clause 9.5.

9.2 Digitav Ltd reserves the right during the Initial or Extended Contract Term and at any time thereafter to terminate this Contract by giving to you not less than 30 days prior written notice of termination. This termination will be only applied as a result of breach of contract.

9.3 After the expiry of the Initial or Extended Contract Term you may terminate the Service by giving not less than 30 days prior written notice of termination, but subject to sub clause 9.1 and 9.4.

9.4 Your notice does not avoid any other liability for Service already provided.

9.5 The Contract is a yearly contract and if you continue Service beyond your Initial Contract Term you will be liable to pay for the remainder of the then current Extended Term even though Service ends before the end of the Extended Term.

### 10. NOTICES

Any notice to be given by either party to the other may be sent by either email or recorded delivery to the address of the other party as appearing in this Agreement or the quote, online order form, invoice or proposal or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved to be deemed to be received on the day it was sent or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

### 11. MATTERS BEYOND DIGITAV LTD'S REASONABLE CONTROL

Digitav Ltd is not liable for any breach of this Contract or liable for any delay or failure in performance of any part of these conditions and its commitments when caused as a result of Force Majeure, war, civil disorder, industrial disputes, inclement weather, acts of local or central government or other competent authorities, and failure by other service providers.

### 12. LIABILITY

12.1 The User acknowledges that Digitav Ltd has no control over the information transmitted via the Service and that Digitav Ltd does not examine the use to which you put the Service or the nature of the information you are sending or receiving. Digitav Ltd hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.

12.2 Digitav Ltd undertakes no liability whatsoever for the acts or omissions of other providers of telecommunication service or for the faults in or failures of their apparatus.

12.3 Digitav Ltd is not in any way liable in contract or otherwise for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.





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- 12.4 Digitav Ltd makes no warranty as regards to its Services or equipment and will not be responsible for any damage allegedly suffered or claimed by you for any reason including but not limited to loss of data, wrong or non deliveries and Service interruptions.
- 12.5 All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including without limitation the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject to sub clause 12.6.
- 12.6 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.
- 12.7 Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim.

### 13. INDEMNITY

You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Services and Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by us in consequences of your breach of non-observance of this Agreement.

### 14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 The User shall obtain all necessary consents and clearances to enable lawful use of all and any intellectual property rights through the Services, including without limitation, clearance and/or consents in respect of your proposed domain name and any images, video or written copy or any other media.
- 14.2 The copyright in any design, together with any other intellectual property rights arising out of any work executed by Digitav Ltd on Alternate Software shall vest in Digitav Ltd, until such time as Digitav Ltd has been paid in full for all of the services which the parties have agreed Digitav Ltd will provide. Upon full payment being made, all intellectual property rights shall be assigned to the Client by Digitav Ltd and the client shall be free to register any such rights at its costs except for any product or service supplied under licence by Digitav Ltd or any other third party (see 14.3)
- 14.3 Digitav Ltd's Services and any bespoke software system or platform developed by Digitav Ltd rely on technology developed by Digitav Ltd. By contracting with Digitav Ltd you are buying a licence to this software and to the plug-in features that you have chosen to purchase. The intellectual property of all the 'server side code' remains that of Digitav Ltd. However, Digitav Ltd grants to you a non-exclusive licence to access Digitav Ltd's Services and related code via web forms only on a single domain or from the Digitav Ltd website or, for your internal use, to administrator the content of one internet domain, subject to the terms and conditions of this Agreement. If you have purchased a licence for more than one Internet domain (i.e. for three domains), you may use the Software for the number of domains licensed.
- 14.4 The User is permitted to adapt and modify those portions of the Software known as Content, that are provided to you in source code format (your templates or web forms), to enable you to achieve interoperability of the Software with your internet domain to create customised interfaces as part of further development of your site subject to clause 14.8.
- 14.5 Any attempt to circumvent access controls of Digitav Ltd content management system (Digitav Ltd CMS) is deemed supporting material breach of this Agreement, resulting in automatic termination of your right to use this software.



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- 14.6 Should Digitav Ltd release any updates, upgrades or new versions of the Software or supplemental code or supporting materials for the Software (\*Additional Software Release\*), all such Additional Software releases shall be considered part of the Software and subject to the terms and conditions of this Agreement and any additional terms and conditions that accompany the Additional Software Releases.
- 14.7 The Users are not permitted, and may not: translate, replicate, reverse engineer or disassemble the Software or any part of the Software which is provided to you, except to the extent this restriction is not permitted by the laws of your jurisdiction; or modify or adapt or create derivative works based on the Software or any part of the Software (except as permitted under the "Licence" provision above), or merge the Software or any part of the Software with any other software program; or separate the components parts of the Software for use in more than one computer or server. You may not provide the source code for the Software or any Improvements to any party (including your customers)
- 14.8 The websites using Digitav Ltd's content management systems, software platforms and bespoke software systems must be hosted on Digitav Ltd web servers that have been specifically set up for this task. In order to protect our copyright over the server side code we reserve the right to only offer our editing system as a "Hosted Solution".
- 14.9 In the unlikely event that Digitav Ltd is unable to fulfil their contractual obligations and agreements due to external influences, then the Digitav Ltd Business Continuity Plan and/or the Digitav Client Business Continuity Plan would be put into practice. This clause is subject to all other clauses in this agreement.

### 15. ASSIGNMENT

- 15.1 The User may assign all or part of this Contract to any other party only with prior written agreement of Digitav Ltd. Such written agreement will not unreasonably be withheld. Digitav Ltd reserves the right to assign all or part of this Contract at any time to any subsidiary or associate company of Digitav Ltd.

### 16. LAW

- 16.1 This agreement shall be governed by and construed in accordance with English law and you hereby submit to the non-executive jurisdiction of the English courts

### 17. HEADINGS

- 17.1 Headings are included in this Assignment for convenience only and shall not affect the construction or interpretation of the Agreement

### 18. ENTIRE AGREEMENT

- 18.1 These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral" between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation, which has not been made expressly in written agreement.