

Terms of Trade: Zoom Room Interactive Limited

1. Introduction

These terms, along with our [Acceptable Use Policy](#), apply to all Services that we (Zoom Room Interactive Ltd) provide to you anytime, whether now or in the future. These Terms always apply except when we have expressly notified you otherwise in writing.

2. Services - We may provide you with the Services as follows:

I. Website Design, Consulting and Marketing Services

- a) We agree with you a Project Scope for the proposed Website Design, Consulting and Marketing Services.
- b) You agree to make information and resources available in a timely manner so as to enable us to fulfill our obligations to you under the Terms of Reference in a timely manner.
- c) We will use our reasonable endeavours to deliver the Website Design, Consulting and Marketing Services to you in accordance with the Project Scope.
- d) The Project Scope is based upon information that you provide to us. Therefore, you must make sure that you fully brief us on all matters. If you do not, the cost of the Project Scope may change (see clause 3.i).
- e) When the Project Scope is agreed and signed by you it is a complete statement of your requirements.

II. Hosting Services

- a) We will provide the Hosting Services you have selected in the Project Scope from the Completion Date. It is important to understand that we are providing you the Hosting Services from the Completion Date not the 'go-live' or 'website launch' date and so unless some other arrangement has been made you will be billed in accordance with the Project Scope from this point forward.
- b) We will aim to provide you with consistent and reliable Hosting Services. We use professional hosting facilities but we are dependent on services provided by our Carriers and cannot guarantee there will be no interruptions to our Hosting Services. When access to your Website is disrupted, we will use our reasonable endeavours to reinstate the Hosting Services as soon as possible. We employ a variety of monitoring systems to detect major interruptions to service. If a major interruption is detected by our monitoring systems our network engineers are immediately notified 24 hours a day, 7 days a week, 365 days of the year.
- c) We will deliver the Hosting Services to you in whatever way we deem to be most appropriate. We can choose or change Carriers and any other suppliers at our sole discretion.
- d) Subject to any limitations in the Terms of Reference, you may choose to change the Hosting Services by requesting the change in writing and we will action your request as soon as we are reasonably able to. Any change to the Charges for the Hosting Services will take effect on the day we notify you that the changed Hosting Services are available for your use. If you change your Hosting Services it is up to you to check what, if any,

special terms and conditions may apply to the new Hosting Services or if there is any fee for changing the Hosting Services. You may contact Customer Services or visit our website to obtain information about the different Hosting Services.

- e) The Hosting Services you have selected may include:
 - I. Phone and email support for the set-up, configuration and loading of your Website and other Services you might have with us. Such phone and email support is also provided to help assist and advise you in ways that you may be able to improve the results that you are achieving with our Services. If included in the Hosting Services you have selected, you will not be charged for phone or email support. There is however, a reasonable use limit of 20 minutes of phone and email support per month per customer set on all our Services. If you exceed these limits then additional Charges for phone and email support may apply. If this is case, we will advise you before providing the phone and email support which will incur additional Charges. Our phone and email support does not cover problems in your computer, communication equipment, your software (except for software (if any) provided by us), your phone line, your internet connection or any other part of the internet not controlled by us.
 - f) We reserve the right to remove or change any Hosting Services we may have offered from time to time and either replace them with new Services or move you on to the most similar or suitable Hosting Service then on offer to our customers. If we do remove or change a Hosting Service that affects you, we will give you as much notice as is practically possible but, in any case, not less than 30 days notice.

III. Additional Services

The provision of any Additional Services shall be as agreed by us in the Project Change (if any) or Project Scope for those Additional Services. Any such Additional Services will also be subject to these Terms as amended by us from time to time.

3. Project Changes

- I. Sometimes projects require changes which weren't expected at the outset or you may request changes to the Services. This can involve less or more cost to you. If this happens, we will both try and agree upon a written variation (including, if necessary, a price variation) to the Services ("Change Specification"). Any Change Specification will become part of the Project Scope for that project. If we cannot agree on a variation (including the price of the variation), the Services will continue in accordance with the Project Scope.

4. Warranties

- I. We warrant that we will provide all our Services with the care and skill that can be expected from a competent E-Business advisor, developer and hosting service provider.
- II. If we supply you with a Website, we also warrant that for 60 days from the Completion Date ("Warranty Period") the Website will conform to the Project Scope. If this warranty is breached within the Warranty Period we will bring the Website into conformity with the Project Scope at our cost. Note that this warranty does not extend to any deviations caused by your negligence, misuse, or alterations or modification made by you that we have not permitted in writing.

- III. Except as mentioned above, all conditions and warranties, express or implied, are excluded to the maximum allowed by law. In particular, we do not warrant that the Website (if any) will:
 - a) be completely free of defect or error; or
 - b) be completely secure; or
 - c) work on all internet browsers, operating systems and screen resolutions.
- IV. Also, if we recommend that you use someone else's products or services in conjunction with the Services, you agree that we will have no liability (however arising) in respect of such products or services or the provision of such products and services to you. For the avoidance of doubt, this includes the use of any automatic credit card transaction process facility or payment gateway.
- V. You agree that to the extent that the Services are purchased by you for the purpose of your business, the provisions of the Consumer Guarantees Act 1993 do not apply.

5. Your Responsibilities

- I. When we have, or are going to, supply you with Services, it is your responsibility to:
 - a) promptly provide, all the information, assistance and approvals that we may reasonably require;
 - b) maintain backup data necessary to replace any of your data that is lost or damaged from any cause;
 - c) obtain, and if required pay for, any consents and licenses required for us to incorporate third party materials in the website; and
 - d) follow any instructions provided by us in respect of the Website and/or the Services and ensure that your employees, agents and contractors who uses the Website and the Services also meet your responsibilities under this Agreement when using the Website and/or the Services;
 - e) use the Services at all times strictly in accordance with our Acceptable Use Policy as amended by us from time to time. Our current Acceptable Use Policy is available on request.
 - f) keep strictly confidential any password and logon we give you for access to the administration functions of the Website.
- II. You confirm that all data, images, software and other information you supply to us or place on your Website ("Your Materials") are:
 - a) complete and accurate and not likely to mislead or deceive or cause damage to the reputation of any person or company;
 - b) do not infringe the rights of any person (including intellectual property rights); and
 - c) are not offensive, harmful, upsetting, unlawful, or otherwise objectionable. For the avoidance of doubt, this includes complying with the Film, Videos and Publications Classification Act 1993.
- III. You agree that you will not, either on your own account or as a consultant, partner, agent, contractor, corporate trustee, shareholder or member of any other person or entity, induce, or attempt to induce, any employee, contractor or licensee of ours to terminate his or her employment or relationship with us.

6. Intellectual Property

- I. We need to be able to use our website layouts and templates for more than one client.

Therefore, except for any Intellectual Property in Your Materials and any Content Materials, Zoom Room Interactive Ltd and its suppliers own all Intellectual Property in the Website (including, the user interface, measurement and tracking tools) and any ideas, know how, software, and documentation developed in connection with the Services (including any Additional Services.)

- II. We also understand that you are paying for the Website, and need to be able to use it. So, provided you meet your payment obligations for the Website Design, Consulting and Marketing Services you are granted a personal, non exclusive, non transferable license to use Zoom Room Interactive Ltd for the term of and in the manner anticipated in the Project Scope. We warrant that we have the right to grant you a licence to use the Services in the manner anticipated in the Project Scope. However, unless we have expressly agreed otherwise in writing, no license is given for you to use Zoom Room Interactive Ltd to develop any products or software that will be sold by you or anyone else.
- III. Provided you meet your payment obligations for the Website Design, Consulting and Marketing Services, you are granted all Intellectual Property rights (including copyright) in the Content Materials provided as part of the Content Services.

7. Liability

- I. We will not be liable to you, or any third party, for any:
 - a) loss or damage to information or data from any cause,
 - b) breach of security;
 - c) loss of profit; and
 - d) incidental, indirect, special or consequential loss or damage.
- II. In any event, the maximum aggregate liability of Zoom Room Interactive Ltd to you arising out of any claim for loss and/or damages for any cause will under no circumstances exceed an amount equal to the total charges paid by you under the relevant Project Scope in the 12 month period immediately preceding the event giving rise to liability.
- III. The limitations and exclusions of liability in this clause 7 shall apply however liability arises, whether in contract, tort (including negligence), breach of statutory duty or otherwise.
- IV. Sometimes we will not be able to fulfil our responsibilities through no fault of our own. Therefore, we are not responsible for any failure or delay to perform our obligations due to events beyond our reasonable control or failure by you to perform any of your responsibilities under this Agreement.
- V. You agree that we should not be exposed to your business and operational risks and so you agree:
 - a) that we will not be liable for the results you achieve from your use of the Services, including any loss of profits, costs or damages related to products or services that you sell, or are unable to sell; and
 - b) to indemnify us against any third party claims, damages, liabilities, costs and expenses arising out of the conduct of your business, including your use of the Services and the Website.

8. Payment

- I. Standard Payment Terms: You agree to pay the Charges for:

- a) Website Design, Consulting and Marketing Services as specified and in the manner provider in the relevant Project Scope; and
- b) Change Specification as specified in Clause 3.1 of this Agreement; and
- c) all Hosting Services monthly in advance from the Completion Date.

II. On Account Payment Terms: If you have applied to, and we have agreed that you may, pay the Charges for Services On Account, we will invoice you for the Charges monthly in advance as specified in the Terms of Reference. You agree:

- a) to pay the deposit specified in the Terms of Reference on receiving our written acceptance of your order as set out on the Order Form;
- b) to pay each month in advance for at least the Minimum Term, the monthly payment specified in the Terms of Reference, with the first such monthly payment being payable on the Completion Date;
- c) to pay the Charges by credit card or direct debit unless otherwise agreed in writing, direct credit/cheque;
- d) to pay the Early Termination Fee if the relevant Terms of Reference are terminated prior to the end of the Minimum Term:
 - I. by you other than as permitted in clause 12; or
 - II. by us in accordance with clause 12.
- e) the Early Termination Fee is a genuine estimate of the actual loss suffered by us in the event that the relevant Terms of Reference is terminated prior to the end of the Minimum Term.

III. All Charges are in New Zealand dollars and are exclusive of all taxes and duties.

IV. Unless otherwise specified above, you agree to pay all invoices within 14 days of the invoice date.

V. If you do not pay the Charges on time we may, at our option do any or all of the following:

- a) suspend or restrict your use of the Services;
- b) terminate the relevant Terms of Reference in accordance with clause 12;
- c) refer your account to our debt collection agency;
- d) charge you collection costs; and/or
- e) charge you default interest at the Default Rate on the amount outstanding until the actual date of actual payment of all amounts owing (including default interest).

9. Credit References and Provision of Related Services

- I. You authorise us to check your credit status with any credit reference agency and/or credit referees you provide as we see fit from time to time and to pass on credit information about you to any credit reference agency at any time. If you are not satisfied with the information about you which we receive from any credit reference agency, you must deal directly with the credit reference agency to resolve this.
- II. We may decline your application for the Services (and/or any request for Additional Services) at our discretion and we do not have to disclose our credit criteria or the reasons for our decision.

10. Confidential Information

- I. Each party will keep all information about the Project Scope, the Services, the Website and other information that is confidential to the other party ("Confidential Information") confidential and will not disclose this information to a third party without the consent of the

other party. Each party shall ensure that its employees, subcontractors, professional advisors and agents abide by these obligations of confidentiality.

- II. Unless we agree otherwise in writing, we will each use any Confidential Information belonging to the other party only for the purposes of fulfilling our obligations to each other under the Project Scope and as permitted in these Terms.
- III. Confidential Information does not include information clearly required to be disclosed by law; or is generally known and available without a party having breached its obligations under this clause 10; or is, or has been, independently and lawfully acquired or developed without the benefit or use of the other party's Confidential Information.

11. Suspension of Services

- I. If you do not meet all of your responsibilities under this Agreement, we may suspend the provision of Services to you, provided we give 7 days notice of such suspension.
- II. We may also suspend or disconnect you from our network if a Carrier supplying services to us suspends or interrupts its service to us and that suspension or interruption affects our ability to provide the Services to you.
- III. We may also suspend or restrict a service in an emergency or whenever we, any Carrier, or any other appropriate person considers that is necessary or reasonable to protect persons, systems or other property.
- IV. Unless we otherwise agree, the Charges will continue to apply where we have suspended the Services.

12. Termination

- I. Either of us may terminate a Project Scope (including the Hosting Services) by providing written notice to the other party if the other party has either:
 - a) been placed in receivership or liquidation or entered into a composition with its creditors or become insolvent or bankrupt; or
 - b) breached a term of the Project Scope, these Terms and failed to remedy such breach after being given written notice allowing at least 30 days to remedy the breach.
- II. If you have agreed to a Minimum Term in the Project Scope, you may not terminate that Project Scope (other than as specified in clause 12.i) until that Minimum Term is completed. You may otherwise terminate a Project Scope by providing us with one months written notice at any time.
- III. We may terminate this Agreement on the occurrence of any of the following events:
 - a) if you have not paid any charges within 14 days of the due date for payment, with the exception of any amounts that are the subject of a genuine dispute and which you have previously notified us in writing as being in dispute; or
 - b) if in our reasonable opinion, you are using the Services for any unlawful abusive, or fraudulent purpose; or
 - c) if you fail to comply with a legal requirement of any of our Carriers concerning your use of the Services.
 - d) if you commit a material breach of this Agreement or any other Agreement between us, when the breach is not reasonably capable of being remedied.
- IV. Upon termination:
 - a) any amounts owing by you to us under the Project Scope and these amounts owing must be paid immediately (including, without limitation, any applicable Early

- Termination Fee); and
- b) subject to clause 12.v, we may be regarded as discharged from any further obligations under the Project Scope.

V. Termination or cancellation of a Project Scope shall not relieve either party from any right, liability, or claim that has accrued on or before the date of termination or cancellation. The provisions of clauses 6, 7, 8, 10, 12 and 13 of these Terms will survive termination or cancellation of a Project Scope.

13. Marketing

- I. You agree that we may:
 - a) include a reference on the bottom of the homepage (or equivalent) of the Website, crediting the design, development and hosting of the Website to Zoom Room Interactive Ltd and/or any of our approved suppliers;
 - b) list you on our marketing materials, including on our website; and
 - c) from time to time, we may send you e-mails with articles and information about our organisation and products and services that we think may be of interest to you. You may elect not to receive such e-mails at any time by clicking the 'unsubscribe' link at the bottom of those e-mails or by contacting the General Manager.

14. Your Information

- I. You agree that for the purposes and performance of our obligations under the Terms of Reference, we may collect information about you. This information may be collected from you and from others.
- II. We will give you access to and, at your request, we will correct any information we hold about you.
- III. With the exception of any Confidential Information, you agree to allow us to use the information we hold about you and may exchange this information with our contractors, agents, representatives, Carriers, and with credit reporting and debt collection agencies.
- IV. In order to improve the service we provide to you, we may monitor and record calls you make to us or we make to you.

15. Variation of Terms

We may amend or replace these Terms from time to time. The amended or replacement Terms ("Amended Terms") will then apply to the Services. We will tell you about any changes at least 30 days before they come into effect by posting the Amended Terms by e-mail of the Amended Terms. If you object to the Amended Terms, you may terminate a Project Scope by providing us with one months written notice. You will be bound by the Amended Terms even if you are unaware of the Amended Terms. If you are in any doubt as to the current terms of trade that apply to the Services please contact our General Manager. Please ask our General Manager at any time for a copy of our current Terms of Trade.

16. Miscellaneous

- I. You agree that, with the exception of urgent interlocutory relief in respect of use of confidential information or intellectual property in breach of this Agreement, both of us will attempt to resolve any dispute under this Agreement by negotiating in good faith for at least 14 days.

- II. If at any time any provision of this Agreement is or becomes illegal or unenforceable, neither the legal validity nor enforceability of the remaining provisions shall in any way be affected or impaired.
- III. If any of your address details change, you agree to promptly provide us with your new address and contact details. We will send you notices and other communications to the last known address, fax number or email address you have given to us.
- IV. You may not assign any rights or obligations under this Agreement without our prior written consent. We may assign any rights under this Agreement without obtaining your prior approval. We may also sub-contract any of our obligations under this Agreement, but in so doing, will not be relieved of any liability to you under this Agreement.
- V. This Agreement shall be governed by New Zealand law.

17. Definitions

“Acceptable Use Policy” means our current policy on what is and is not acceptable use of the Services as amended by us from time to time.

“Additional Services” means any additional services (not being Hosting or Website Design, Consulting and Marketing Services) that we agree to provide to you pursuant to Clause 2.III.

“Charges” means all charges payable by you to us for the Services you have selected in the Terms of Reference. The Charges include amounts payable under any Change Specification or for Additional Services)

“Default Rate” is the rate of 3.0% per month. It applies from the date payment by you is due to the date we receive your payment in full.

“Carriers” means is any entity with whom we have entered into an agreement or arrangement (directly or indirectly) providing for the passing of customer generated or customer destined internet traffic between us and that entity.

“Change Specification” has the meaning given in clause 3.i.

“Completion Date” means the date on which we advise you that the Website is ready for the loading of your information and data.

“Content Material” means all written copy, illustrations, diagrams, photographs or other materials provided to you as part of the Content Services.

“Content Services” means any copywriting, illustration, photography, or other services to provide Content Material for the Website as selected by you in a Terms of Reference and provided by, or on behalf of us, as part of the Website Design, Consulting and Marketing Services. The particulars and specifications of the Content Services are described in the relevant Product Brochures for those services.

“Early Termination Fee” means the sum of the following equation:

(Cost of Services/Minimum Term) X number of months elapsed in Minimum Term where the ‘Cost of

Services' is the sum of the list prices for each Service terminated before the end of the Minimum Term times a multiplier of 1.4

"Hosting Services" means the ongoing hosting and the support Services selected by you in a Project Scope and to be provided by us to:

1. place the Website on the computer server(s) operated by Zoom Room Interactive Ltd in order that you and others may use the Website;
 2. provide password restricted access for you to use and administer the Website;
 3. allow storage of information received by you or from the general public on such server(s); and
 4. support and enhance your use and operation of the Website,
- as more particularly described in the relevant Product Brochure.

"Intellectual Property" means all intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation of 1967 and, without limitation, includes any discovery, invention, novel or original designs (whether or not registrable as designs or patents), any trade marks or trade names or goodwill rights associated with such marks, applications for any of the foregoing, the copyright in any software, drawings, plans, specifications, designs, know-how and trade secrets owned or used, secret process or improvement in procedure.

"Minimum Term" means, where you are paying the Charges On Account, a fixed term of either 24 months or 36 months as selected by you on the Order Form, in each case which commences on the Completion Date.

"Monthly Service Fee" means the fee paid by you to us for the Hosting Services.

"On Account" is where you pay the Charges for the Services by paying a deposit followed by equal installments paid monthly in advance for not less than the Minimum Term as specified in the Order Form.

"Order Form" means the Zoom Room Interactive Ltd order form signed by or on behalf of you, which specifies the Services you require from us.

"Services" means the Website Design, Consulting and Marketing Services, the Hosting Services and the Additional Services as described in clause 2.

"Project Scope" means:

- (a) the signed Acceptance contained within the Proposal; and
- (b) each agreed Change Specification (if any); and
- (c) the specifications for any Website which forms part of the Services,

"we" or "us" means Zoom Room Interactive Ltd and "our" has a corresponding meaning.

"Website" means the website we create for you as part of the Website Design, Consulting and Marketing Services.

"Website Design, Consulting and Marketing Services" means the website design, consulting and marketing services and more fully described in the relevant Product Brochures and includes consulting, design, computer programming, Content Services, training and marketing services for the purpose of creating, improving and promoting the Website.

"You" means the customer under this Agreement and "your" has a corresponding meaning.