



DYNAMIC DESIGN UK

Website Hosting Agreement

This Agreement is between:

1. [Dynamic Design UK](#), a trading name of Dan Kingsley (“the Host”) and
2. “The Client”

Whereas:

1. The Host is a web design and development freelancer offering website design, development, and hosting services to clients using all appropriate hardware providers connected to the world wide web via the internet.
2. The Client wishes to use The Host’s service to host The Client’s website and by making a payment of invoice to use the services supplied, the Client acknowledges that they have read, understood, and agreed to these Terms and Conditions to the exclusion of all others.

It is agreed as follows:

Definitions and Interpretation

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“*Account*” means the details of the Client that are required and held by the Host to facilitate the provision of the Service to the Client including, but not limited to, identification and location details, payment details, username and password, and details of the Service provided to the Client;

“*Business Day*” means a day (that is not a Saturday or Sunday) on which banks are open for business in the UK.

“*Client Website*” means the website that the Host is hosting for the Client and refers to all parts of that website including, but not limited to, component files and related services such as email;

“*Fee*” means the sum payable by the Client to the Host in order to receive the Host’s Service;

“*Hosting Hardware*” means all computer and networking equipment used by the Host in the provision of the Service including, but not limited to, servers and network infrastructure;

“*Hosting Package*” means one of the Service packages offered by the Host and generally refers to the package offered to the Client;

“*Hosting Software*” means all software used by the Host in the provision of the Service;

“*Intellectual Property*” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, Services 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 as at the date of the Contract or in the future.

“*Order*” means an order placed by the Client with the Host for the provision of the Service; and

“*Service*” means the collective components of the Host’s hosting service which includes, but is not limited to, the provision of internet connectivity, bandwidth, website storage, software, DNS services, email accounts and data backups, in combination with the Client’s Hosting Package and can refer either to those components as a whole or to specific parts as the context may require. The clause headings used in this Agreement are used for convenience only and are not intended to affect the meaning or interpretation of the terms of this Agreement.

Service

Once the Client’s Order has been placed and processed, the Host will use its best endeavours to commence provision of the Service as soon as reasonably possible. In any event the provision of the Service will commence no later than fifteen Business Days after completion and approval of the Client’s Website.

The Host may, in its sole discretion, alter, improve or otherwise modify the Service provided that any such change will not significantly alter the provision of the Service to the Client or result in the removal of any features or services that changes and will receive full documentation of any action required on their part.

No alterations to the Service shall affect the Fees payable by the Client during their contractual period.

The Host may take any action necessary to address or repair faults in Hosting Hardware or Host Software without any prior notice to the Client. If such faults or remedial action results in an interruption to the provision of the Service the Client will be notified at the Host’s earliest convenience via email.

Availability of Service

The Host will use its reasonable endeavours to ensure that the Service is provided to the Client on a constant, uninterrupted basis throughout the Term of this Agreement.

Where the Service is unavailable for more than two hours, the Host will contact the Client and provide reasons for the interruption or, where this is not possible due to an undiagnosed problem, state that the problem is undiagnosed but is being investigated.

Whilst the Host will use reasonable endeavours to ensure the integrity and security of the Hosting Hardware, the Host does not guarantee that the Hosting Hardware will be free from unauthorised users or hackers.

Where Service interruption due to Hosting Hardware failure cannot be remedied within two Business Days the Host, with consent of the Client, shall endeavour to transfer the Client’s Website to alternative Hosting Hardware in order to restore the provision of the Service.

Where the Client and/or the Client’s users are unable to access/use the Client’s Website, the Client shall first ascertain whether the inability of access/use is caused by a failure on the part of the Client’s and/or

its users' internet service provider and/or equipment. After performing these checks the Client shall contact the Host using the following details: Email: dan@dynamicdesignuk.com or telephone: 07830 873129.

Where the provision of the Service is interrupted through the fault of any third party, the Host shall bear no responsibility or liability. Where it is subsequently established that fault does not lie with the Host but with the Client's and/or its users' internet service provider and/or equipment, the Host reserves the right to charge the Client such reasonable cost as the Host may have incurred.

Fees and Payment

Fees for the Hosting Packages offered by the Host are as quoted in correspondence or email to the Client. All charges payable by the Client shall be in accordance with the information quoted.

The Client is required to pay all fees due in advance either on a monthly or yearly schedule.

For the first twelve months of Service provision in some cases the payment of fees due shall form part of the Order process.

For all subsequent monthly or yearly periods of Service provision the Client will be sent an invoice which will be due within 30 days.

Payment must be made within the period in order for provision of the Service to continue without interruption.

The Host may at any time change the price of its Hosting Packages, however the Client will not be subject to any additional charges or refunds during a the contracted month or year.

Any change in fees will be reflected in subsequent renewals of Service provision.

All fees payable by the Client to the Host shall be paid in full, without set off or deduction.

Payments may be made by Direct Debit, Credit Card, BACS, cash or cheque as indicated on the invoice.

Invoices not paid by their due date incur a £25 admin fee. If they still remain outstanding after a further 30 days, the Client website will be temporarily disabled and the admin fee increased to £50 to re-enable the website.

Changes to this Agreement

The Host reserves the right to change the terms of this Agreement and all other terms and conditions and policies which may affect Clients in order to comply with changes in the law.

The Client will be informed of any such changes and shall be deemed to be bound by them one calendar month after receiving the notice.

If the Client does not agree to be bound by the changes they may terminate this Agreement in accordance with the Term and Termination clause of this Agreement.

Client Undertakings and Obligations

The Client may not use the Service or any other Hosting Hardware and Hosting Software for any unlawful or otherwise inappropriate purposes. This includes, but is not limited to:

- Distribution of viruses, spyware, malware, or any other form of code designed to cause harm or nuisance to hardware or software or to obtain data without consent;

- Distribution of pirated material including, but not limited to software, movies, music and written works; and Distribution of obscene or illegal material including that which is pornographic, abusive, threatening, malicious, harassing, fraudulent, defamatory or that which encourages criminal activities.
- Distribution of large volumes of unsolicited email (spam) to recipients. All complaints made to the Host of such activity will be investigated, and may result in immediate suspension or cancellation of service at the Host's sole discretion.

The Client may not use their website to link to any other sites or systems hosting any material described above.

Use of the Client's Website in any manner which is a violation or infringement of the rights of any individual, firm or company within the United Kingdom and elsewhere.

The Client will monitor and supervise any and all third party activity on their website (including communications systems such as forums). Any third party activity that may fall within the criteria above must be stopped or removed, as appropriate.

The Client must ensure that any and all activity conducted through the Client's Website in relation to the collection of personal information complies with the provisions of the General Data Protection Regulation (GDPR).

The Client is responsible and accountable for all activity relating to their website and the Service that is carried out by third parties on their behalf.

The Client will use its best and reasonable endeavours to supply all information required to facilitate the provision of the Service to the Host in a timely fashion.

Intellectual Property and Proprietary Rights

The Client will not acquire ownership rights over any of the Host's Intellectual Property in or in relation to the Service or in relation to any other property owned by the Host.

The Host will not acquire ownership rights over any of the Client's Intellectual Property in the Client's Website or any other material belonging to the Client. In consideration of the Fees and Payment paid in full by the Client to the Host, the Host grants to the Client a non-exclusive licence to use any Hosting Software issued and authorised by the Host for use by the Client for the Client's Website.

The Client may not use the Hosting Software for any other purpose other than as specified in this Agreement without the prior written consent of the Host and the Client acknowledges that additional fees may be payable on any change of use approved by the Host.

The Client agrees to fully indemnify the Host against all costs, expenses, liabilities, losses, damages, claims and judgements that the Host may incur or be subject to as a result of the infringement of any Intellectual Property infringement owned by third parties arising from:

The Client's failure to obtain the necessary rights and permissions from third parties in order to enable the Host to legally provide the Service; The provision of the Service by the Host based upon information and material provided by the Client.

Liability

The Host shall not be liable to the Client or to third parties for:

- Any losses resulting from interruptions or downtime to the Service;
- Any inability, on the part of the Client, to use the Service;
- Any damage or loss resulting from the loss of confidentiality caused by the storage of information on the internet.

Nothing in this Clause shall exclude the liability of the Host for death or personal injury resulting from the Host's negligence or that of its employees or agents.

Nothing in this Clause or in this Agreement shall exclude the liability of the Host for fraudulent misrepresentation.

Warranties and Disclaimer

Subject to the provisions of this Agreement, the Host gives no warranty, express or implied, in connection with the Service as to fitness for purpose, quality, non-infringement or merchantability.

Both Parties warrant that they are authorised and permitted to enter into the Agreement, and have obtained all necessary permissions and approvals.

Both parties warrant and undertake that they are not aware of anything within their reasonable control which might or will adversely affect their ability to fulfil the obligations under the Agreement.

Indemnities and Limitation of Liability

The Client will fully indemnify the Host against all costs, expenses, liabilities, losses, damages and judgements that the Host may incur or be subject to as a result of any of the following:

- The Client's misuse of the Service;
- The Client's breach of this Agreement;
- The Client's negligence or other act of default;
- The Activities of third parties conducted on the Client's website using facilities such as blogs, forums and chat.

Neither party shall be liable to the other under this Contract in contract, tort, or otherwise (including negligence), pre-contract or other representations (other than fraudulent or negligent misrepresentations) or otherwise for any loss of business, contracts, profits or anticipated savings or for any indirect or consequential or loss whatsoever.

The Client agrees to indemnify the Company against any claims, damages, losses, costs and expenses which the Company may sustain or incur in relation to any content and materials which the Client provides, such indemnity applying in respect of any claims for any breach of applicable law or regulation or any infringement of any intellectual property rights.

The Company agrees to indemnify the Client against any claims, damages, losses, costs and expenses which the Client may sustain or incur in relation to breaches of the Confidentiality and Intellectual Property Rights clauses of this Contract committed knowingly by the Company.

Nothing in this Contract shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees

Force Majeure

Neither the Host nor the Client shall be liable for breaching this Agreement where that breach results from Force Majeure.

Force Majeure refers to any event that is beyond the reasonable control of the parties and includes, but is not limited to, acts of God; acts of war; national emergencies; governmental action; union action; civil unrest; fire; explosion; flood and theft.

Term and Termination

The initial period of Service provision will commence on the date that the Client's Website goes live or the Client's Order is processed. This term shall last for a period of either one month or a year depending on the invoice frequency agreed, subject to the termination provisions below.

Subsequent periods of Service Provision shall last for a period of one month or a year and will follow on from a previous period, without interruption, subject to the fulfilment of the Client's obligations under the Fees and Payment Clause of this Agreement. All subsequent periods are subject to the termination provisions below.

Either party may terminate this Contract immediately in the event that:

- Either party commits a serious, grave or material breach or persistent breaches of this Contract including non performance, default or neglect of its duties, responsibilities and obligations under this Contract, and
- Such breach remains unremedied for a period of 30 days from written notice given by the other party specifying the breach and requiring its remedy; or
- Such breach is not capable of remedy.

The Host reserves the right to terminate this Agreement at any point with one months notice at the host's discretion, or The Host reserves the right to terminate this Agreement or to suspend the Service in the following circumstances:

- If the Client fails to pay fees due under the Fees and Payment Clause of this Agreement; or
- If the Client is in breach of the terms of this Agreement; or
- If the Client becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986; or
- If the Client is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or
- If the Client has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.

The Client may request the termination of the Service and this Agreement by written notice, one month in advance. The following shall apply to such situations:

- Any issuing of refunds is at the sole discretion of the Host.
- If the Client wishes to terminate during the course of a yearly period of Service provision the Service will end one month after the Host receives the Client's notice.

- On termination of the Service and this Agreement the Client's Website and all related material will be removed from the Hosting Hardware.

Upon termination of this Contract the following shall become immediately due:

- Any and all outstanding invoices; and
- Any costs accrued up to termination date not already subject to invoice; and
- Any costs incurred by the Company upon termination of the contract.

Assignment

The Host reserves the right to assign or otherwise transfer any rights or obligations under this Agreement.

The Client may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Host.

Severance

In the event that any provision of this Agreement is found to be invalid or otherwise unenforceable for any reason, the remaining provisions shall continue in full force without being impaired or invalidated in any way. The waiver by either party of any provision of this Agreement will not operate or be interpreted as a waiver of any other provision or a subsequent breach of any provision.

Confidentiality

Both parties shall keep in strict confidence all information which are of a confidential nature and have been disclosed by one party to the other party and shall procure that the receiving party's employees, agents, consultants or subcontractors keep in strict confidence all such information other than for the purposes of performing its obligations under this Agreement.

Notice

Any notice given by either of the parties under this Contract shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery or first-class post to the receiving party as set out in this clause.

Any such notice shall be deemed to be effectively served as follows:

- In the case of service by pre-paid recorded delivery or first-class post 48 hours after posting; or
- In the case of service by email on the next working day

General

Failure by either party to enforce any accrued rights under this Agreement is not to be taken as or deemed to be a waiver of those rights unless the waiving party acknowledges the waiver in writing.

It is hereby declared that the foregoing paragraphs, sub-paragraphs and clauses of this Agreement shall be read and construed independently of each other.

Should any part of this Agreement or its paragraphs, sub-paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub-paragraphs and clauses.

This Agreement sets out the entire contract and understanding of the parties and is in substitution of any previous written or oral Agreements between the parties.

Jurisdiction

This Agreement shall be interpreted construed and enforced in accordance with the laws of England and Wales.

The parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

Mediation

If at any time any question, dispute or difference whatsoever shall arise as to the formation, meaning, operation, validity or effect of the Agreement or the rights, duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of the Agreement, either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to a mutually agreed Third Party Mediator within fourteen days of such notice.

Arbitration

If an attempt at Mediation should fail then the dispute or difference shall be referred to the arbitration of a single arbitrator to be agreed upon by the parties within fourteen days of the failure of such an attempt, or in default of such agreement, to be nominated by the President for the time being of the Law Society of England and Wales such arbitration to be conducted in accordance with the Arbitration Act 1996.

Third Party Rights

A person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.