

# RESILIENT BUSINESS SYSTEMS



## INTERNET HOSTING - TERMS & CONDITIONS



Resilient Business Systems, Registered in England No. 5255367  
Registered Office: 36 Pounteys Close, Middleton St George, Darlington DL2 1LF



Created by: Andrew Read  
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## 1. Information About Us

- 1.1. [www.resilientsystems.co.uk](http://www.resilientsystems.co.uk) is a site operated by Resilient Business Systems Limited ("we", "us" and "our"). We are registered in England and Wales under company number 5255367 and have our registered office and trading address at 36 Pounteys Close, Middleton St George, Darlington, Co. Durham, DL2 1LF. Our VAT number is 852 6112 42.

## 2. Your Status

- 2.1. By placing an order with Resilient Business Systems, you warrant that:
  - 2.1.1. you are legally capable of entering into binding contracts; and
  - 2.1.2. you are at least 18 years old.
- 2.2. If you are acting on behalf of a company or other business, you further warrant that you personally have the authority to bind that company or business on whose behalf you are placing an order.

## 3. Our Status

- 3.1. We may provide links on our site to the websites of other companies, whether affiliated with us or not. We cannot give any undertaking that products or services you purchase from companies to whose website we have provided a link on our website will be of satisfactory quality, and any such warranties are DISCLAIMED by us absolutely. This DISCLAIMER does not affect your statutory rights against the third party seller

## 4. Consumer Rights

- 4.1. If you are buying as a consumer (i.e., not within the course of your business), ordinarily, the Consumer Protection (Distance Selling) Regulations 2000 allow you to cancel the Contract at any time within seven (7) working days, beginning on the day after you received the Acceptance Confirmation. However, by placing your order for the Services, you agree to us starting supply of those Services before the end of the seven working day cancellation period referred to here. As such, you will not have the right to cancel the Contract under the Consumer Protection (Distance Selling) Regulations 2000.
- 4.2. This provision does not otherwise affect your statutory rights.

## 5. Quality

- 5.1. We warrant that (subject to the other provisions of these terms and conditions) any Services purchased from us through our website will be provided with reasonable care and skill.
- 5.2. We will not be liable for a breach of the warranty in clause 5.1 unless:
- 5.3. You give written notice of the breach to us via an email to us at Resilient Business Systems; and
  - 5.3.1. we are given a reasonable opportunity after receiving the notice of examining our provision of the Services to you.
- 5.4. We will not be liable for a breach of the warranty in clause 5.1 if:
  - 5.4.1. the problem arises because you failed to follow our oral or written instructions as to the use of the Services (if there are any); or
  - 5.4.2. you alter the Services without our written consent; or
  - 5.4.3. the problem arises because of misuse.
- 5.5. Subject to clause 5.2 and clause 5.3, if we are in breach of the warranty in clause 10.1 we will, at our expense, use all reasonable commercial efforts to remedy the breach promptly or refund the price of the Services at the pro rata Contract price. This constitutes your sole and exclusive remedy for any breach of the warranty set out in clause, notwithstanding the foregoing; we do not warrant that your use of the Services will be uninterrupted or error-free.
- 5.6. We reserve the right to modify the Services without notice to you provided such modification does not adversely affect your access to, or use of, the Services or detract from the overall performance of the Services. Any change which may have such adverse effect on you or may detract from the overall performance of the Services will be notified to you at least sixty (60) days prior to the change taking effect.
- 5.7. You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf which is not set out on our website or otherwise confirmed in writing by us. Nothing in this clause will exclude or limit our liability to you for fraudulent misrepresentation.

## 6. Hosting Service – Service Levels

- 6.1. We will use our reasonable endeavours to make our servers available to you as part of the Hosting Service you purchase for ninety-nine point nine (99.9) per cent of each calendar month. We do not warrant access to our servers will be uninterrupted or error free but we shall use reasonable endeavours to keep downtime to a minimum. We shall make all commercially reasonable efforts to provide you with advanced notification of all scheduled and emergency outages through email/phone call.
- 6.2. Credit will not be given for any form of downtime or service unavailability

## 7. IP Addresses

- 7.1. You will have no right, title or interest in any internet protocol address ("IP address") allocated to you, and any IP address allocated to you is allocated as part of the Hosting Service you purchased and is not portable or otherwise transferable by you in any manner whatsoever.
- 7.2. If an IP address is re-numbered or re-allocated by us, we shall use our reasonable endeavours to avoid any disruption to you.
- 7.3. You agree that you shall have no right, title or interest to any IP address upon expiry or termination of the Services, and that the acquisition by you of a new IP address following expiry or termination of the Services shall be solely your responsibility.

## 8. Backup of your Material

- 8.1. It is your responsibility to maintain appropriate and up-to-date back-up copies of any data, information or other material you upload (or permit to be uploaded) onto our servers ("Material") as part of your use of the Hosting Services. In the event of loss of or damage to your Material, you will not be given access to the server back-up we maintain pursuant to our archiving procedure.
- 8.2. We will follow our one-off archiving procedures for the data stored on our servers, once the site has been signed over to you. In the event of any loss or damage to our servers, your sole and exclusive remedy will be for us to use reasonable commercial efforts to restore the data on our servers (including your Material) from the latest back-up we maintained in accordance with our archiving procedure. We will not be responsible for any loss, destruction, alteration or disclosure of your Material caused by you or any third party.

## 9. Hosting Service Usage Limitations

- 9.1. Your hosting service package comes with a pre-determined web space allocation, as per the hosting service you purchased, provided that
  - 9.1.1. Your material is linked into web pages
  - 9.1.2. You do not use the Hosting Service as a backup of, or repository for, your material
  - 9.1.3. You maintain good housekeeping to maintain your material
  - 9.1.4. You comply with our Acceptable Use Policy.
- 9.2. The Hosting Service package you order includes the per calendar month bandwidth allowance applicable to that hosting package as this is set out on this website at the time of your order. The Hosting Service you have ordered will be automatically suspended if this monthly bandwidth allowance is exceeded. If this happens, you have to upgrade your Hosting Service package to one which includes a higher monthly bandwidth allowance, or wait for the Hosting Service to resume at the start of the following calendar month.
- 9.3. Within your Hosting Service package you have ordered you will only be allowed to use up to the maximum of your agreed bandwidth. At our absolute discretion, we may allow your usage to exceed this limitation, and we will speak to you about increasing your hosting requirements.
- 9.4. The Hosting Service package you order includes the agreed number of mailboxes applicable to that hosting package as set out on at the time of your order. However, any mailboxes that have not been accessed for one hundred (100) clear days will be automatically deleted from our system.
- 9.5. When using the Services, you must comply with our terms of Website Use Policy and our Acceptable Use Policy and these are incorporated into the Contract by reference. Any conflict between our terms of website use and these terms and conditions, will be resolved in favour of these terms and conditions.
- 9.6. We shall be entitled to terminate the Contract, or suspend or terminate the provision of any individual Services, if you are in breach of our terms of our Website Use Policy and our Acceptable Use Policy.

## 10. Support

- 10.1. If a problem has arisen with regard to the Services or your registered account, you can contact us via any of the agreed telephone numbers/email address within your agreed SLA contract support hours – typically, and unless specifically stated, these hours are 9:00am – 5:30pm Monday to Friday not including Bank Holidays
- 10.2. Our support team will help resolve any problems you have with the Services you are receiving. We will not provide programming support to you, but, as part of our Hosting Services, our servers are compatible with many programming languages.

## 11. Domain Names

- 11.1. We will endeavour to procure the registration of the domain name you request;
  - 11.1.1. We will not be liable in the event that the relevant domain name registry refuses to register the domain name you request, or subsequently suspends or revokes any registration for that domain name;
  - 11.1.2. We shall not act as your agent or on your behalf in any dealings with domain name registry;
  - 11.1.3. The registration of the domain name you request and its ongoing use is subject to the relevant domain name registry's terms and conditions of use which you should read and understand our Terms & Conditions;
  - 11.1.4. You are responsible for ensuring that you are aware of the terms referred to in clause 11.1.3 so that you can comply with them;
  - 11.1.5. The domain name you request will only have been successfully registered when you appear as the registrant on the appropriate "whois" database of the top level domain name registrar;
  - 11.1.6. We shall have the absolute discretion to require you to select a replacement domain name to the one you have requested to be registered, and may suspend or terminate our performance of the Domain Registration and Renewal Service, if, in our opinion, there are reasonable grounds for us to believe that your current choice of name is, may or is likely to be in bad faith, breach of the provisions of these terms and conditions or any legal or regulatory requirement; and
  - 11.1.7. You confirm and warrant that you are the owner of any trade mark in any domain name (or have the authority of the owner of any trade mark to use such name) that you have requested be registered.
  - 11.1.8. You confirm and warrant that you are the legal owner of any domain name (or have the authority of the legal owner to use such domain name) supplied by you, or otherwise authorised by you, for use as a domain name in connection with any website in relation to which the Hosting Service supplied to you is used.

- 11.2. Once the domain name has been successfully registered, it will need to be renewed periodically to ensure you retain your registration of it. We will send you renewal notices thirty (30) days, fourteen (14) days, seven (7) days and one (1) day before the renewal date of your registered domain name. These notices will be sent to the email address then registered against your company.

## 12. Intellectual Property Rights

- 12.1. You, or your licensor, retain all intellectual property rights in your Material, and you grant to us a worldwide, non-exclusive, royalty free licence to use, store and maintain your Material on our servers and publish your Material on the Internet for the purpose of providing the Hosting Service to you. You warrant that your Material does not infringe the intellectual property rights of any third party and you have the authority to grant the licence in this clause 12.1 to us. We may make such copies as may be necessary to perform our obligations, including making back-up copies of your Material.
- 12.2. You will defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Services or of any claim or action that your Material infringes, or allegedly infringes, the intellectual property rights of a third party.
- 12.3. If you download software we own from our website, we grant you a non-exclusive, non-transferable royalty free licence to use that software for the purpose set out on our website in relation to that software. Such licence will automatically terminate when we stop providing the Hosting Services to you.
- 12.4. Any third party software that you download from our website shall be licensed to you on the standard software licence terms of the owner of the intellectual property rights in that third party software as those licence terms are notified to you at the time you download such software.
- 12.5. We retain all intellectual property rights in the Hosting Services (other than in your Material) and our software referred to in clause 12.3. Accordingly, you must not decompile, disassemble or reverse engineer the Hosting Services or our software.

We will defend you against any claim that the Hosting Services (but not materials stored or maintained on our servers by third parties) infringe any United Kingdom intellectual property rights of a third party (other than infringements referred to in clause 12.2, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:

- 12.5.1. You give prompt notice of any such claim;
  - 12.5.2. You make no admissions or settlements without our prior written consent;
  - 12.5.3. You provide reasonable co-operation to us in the defence and settlement of such claim, at your expense; and
  - 12.5.4. We are given sole authority to defend or settle the claim.
- 12.6. In the defence or settlement of the claim, we may obtain for you the right to continue using the Hosting Services, replace or modify the Hosting Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract with you without liability to you (in which case we will refund to you the price you have paid on a pro-rata basis). We will have no liability to defend or indemnify you if the alleged infringement is based on:
- 12.6.1. A modification of the Hosting Services by anyone other than us;
  - 12.7. your use of the Hosting Services in a manner contrary to our instructions or our Acceptable Use Policy; or
  - 12.7.1. Your use of the Hosting Services after notice of the alleged or actual infringement from us or any appropriate authority.
- 12.8. The foregoing states your sole and exclusive rights and remedies, and our entire obligations and liability, for the infringement of any third party's intellectual property rights by the Hosting Services.

## **13. Our Liability**

- 13.1. We do not monitor and will not have any liability for your Material or any other communication you transmit, or allow to be transmitted, by virtue of the Hosting Services.
- 13.2. Due to the public nature of the Internet, we shall not be liable for the protection of the privacy of electronic mail or any other information transferred through the Internet or via any network provider and no guarantee or representation is given that the Hosting Services will be free from hackers or unauthorised users. You shall be liable for the content of any emails transmitted by virtue of the Hosting Services, for any material you upload to, or allow to be uploaded to, our servers and for ensuring compliance at all times with all relevant legislation (including, but not limited to the Data Protection Act 1998 and all other privacy laws,



regulations and guidance notes made or issued there under).

- 13.3. All conditions, terms, representations and warranties that are not expressly set out in these terms and conditions (or the documents referred to in them) are hereby expressly excluded.
- 13.4. We do not exclude or limit in any way our liability:
  - 13.4.1. for death or personal injury caused by our negligence;
  - 13.4.2. under section 2(3) of the Consumer Protection Act 1987;
  - 13.4.3. for fraud or fraudulent misrepresentation; or
  - 13.4.4. for any matter for which it would be illegal for us to exclude, or attempt to exclude, our liability.
- 13.5. We will not be responsible for the following types of losses (in each case whether direct, indirect or consequential) and whether they are caused by our negligence or otherwise:
  - 13.5.1. Loss of income or revenue;
  - 13.5.2. Loss of business;
  - 13.5.3. Loss of profits or contracts;
  - 13.5.4. Loss of anticipated savings;
  - 13.5.5. Loss of goodwill;
  - 13.5.6. Loss of software or data;
  - 13.5.7. Wasted expenditure (such as pay per click advertising costs); or
  - 13.5.8. Wasted management or office time.
- 13.6. Subject to clause 13.4 and clause 13.5, our maximum aggregate liability under or in connection with the performance or contemplated performance of the Contract, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed one hundred and ten (110) per cent of the price you have paid to us for the Services during the twelve (12) months preceding the event giving rise to the liability in question. Accordingly, you are advised to acquire business interruption insurance, or other appropriate insurance, to protect you and your business in the event of interruption of the Services (in particular the Hosting Service).
- 13.7. Where you buy any product or service from a third party seller through following a link on our website to such third party's website, the seller's individual liability will be set out in the seller's terms and conditions. You should consult such terms and conditions.

## 14. Duration of the Services and cancellation

- 14.1. That part of the Contract relating to our Domain Registration and Renewal Service will commence on the date of agreement of order. It will continue until:
- 14.1.1. We have registered the domain name you have requested (the "Domain Name") and you subsequently ask us not to renew the registration of your Domain Name by contacting Resilient Business System in writing 1 month prior to expiration.
  - 14.1.2. We terminate the supply of our Domain Registration and Renewal Service by notice to you because:
    - 14.1.2.1. The Domain Name is no longer available for registration;
    - 14.1.2.2. Clause 11.1.6 applies;
    - 14.1.2.3. You are in breach of clause 11.1.7; or
    - 14.1.2.4. Of some other reason preventing the registration of the Domain Name.
- 14.2. If we terminate the Domain Registration and Renewal Service under clauses 14.1.2.1, 14.1.2.2 or 14.1.2.4, we will refund the price you have paid for the Domain Registration and Renewal Service to the credit card, debit card or other account you used to make the payment.
- 14.3. That part of the Contract relating to Services other than our Domain Registration and Renewal Service will also commence on the date we send you our Acceptance Confirmation. Unless such Services are terminated as provided in this clause 14.2, they shall continue for the minimum period of time that applies to the Service you have purchased (as these are set out on our website and subsequently confirmed in the Acceptance Confirmation) ("Minimum Term"). After expiry of the Minimum Term, they will continue on a month to month basis until terminated:
- 14.3.1. By you giving to us at least seventy-two (72) hours advance written notice via an email to Resilient Business Systems. As part of our cancellation process, we will respond to you through in a reply to your email and you must re-confirm your cancellation request. You must re-confirm your cancellation request via an email we will continue to supply the relevant Services and your cancellation will be ineffective. You cannot cancel any of your Services by telephone. You will not receive any refund of the price you have paid for the Services you have cancelled; or
  - 14.3.2. By us giving to you at least thirty (30) days advanced notice in written sent to the then current email address registered against your account.

- 14.4. The monthly price for Services we supply under Contracts that continue on a month to month basis under clause 14.2 shall be charged monthly in advance with an invoice. Such payment will be taken on the same date of the month as on which the Services had originally commenced ("Payment Date") unless or until you cancel the Services in accordance with clause 14.3. We will not provide you with a refund for a cancellation that is part-way through a billing period. Where the Payment Date does not recur in a particular month (e.g., 31 January, but there is no 31 February), you will be charged on the closest preceding date to the Payment Date (e.g., 28 February) for that month.
- 14.5. Without prejudice to any other right to terminate or suspend the Services we may have under these Terms & Conditions or the terms of our Website Use Policy or our Acceptable Use Policy, we may terminate the Contract at any time by giving you thirty (30) days advance notice by emailing you at the email address registered against your account. If we cancel the Services, we will refund to you the price you have paid for the Services on a pro-rata basis for the unexpired Minimum Term.
- 14.6. Notwithstanding anything to the contrary in these terms and conditions, if you are in breach of an obligation of these terms and conditions we may terminate the Contract by seven (7) days notice to you and/or, at our absolute discretion, terminate or suspend without notice any individual Services we provide to you from time to time.
- 14.7. Expiry or termination of the Contract shall be without prejudice to any rights and liability of either of us arising in any way under that Contract as at the date of expiry or termination.

## **15. Deletion of your Data**

- 15.1. If you cancel your Services, any data we hold or host in relation to the Services you have cancelled will be immediately and permanently deleted from our system. Accordingly, you are strongly advised to make appropriate copies of such data before you cancel your Services.
- 15.2. If you have purchased a Hosting Service aimed at resellers, your package will allow multiple accounts to be set up for your customers. If you disable any of these accounts and they remain disabled for fifty (50) clear days, we will immediately and permanently delete those disabled accounts (and all the data hosted in relation to them) from our system.

## **16. Additional Terms**

- 16.1. Additional terms and conditions may apply for our offers. If so, you will be advised of them at the relevant point.

## 17. Written Communications

- 17.1. Applicable laws require that some of the information or communications we send to you should be in writing. When using our hosting services, you accept that communication with us will be mainly electronic. We will contact you by e-mail to provide you with this information. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.
- 17.2. All notices given by you to us must be given via email. We may give notice to you at either the then current e-mail or postal address registered against your account with us.

## 18. Third party rights and transfer of rights and obligations

- 18.1. Neither you nor we intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 18.2. The Contract is binding on you and us and on our respective successors and assigns.
- 18.3. You may not transfer, assign, charge or otherwise dispose of the Contract, or any of your rights or obligations arising under it, without our prior written consent.
- 18.4. We may transfer, assign, charge, sub-contract or otherwise dispose of the Contract, or any of our rights or obligations arising under it, at any time during the term of the Contract.

## 19. Events outside our Control

- 19.1. We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by events outside our reasonable control ("Force Majeure Event").
- 19.2. A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:
  - 19.2.1. misuse, alteration or interference by you or any third party of our servers or systems (including virus and hacker attacks);
  - 19.2.2. strikes, lock-outs or other industrial action;
  - 19.2.3. civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;

- 19.2.4. fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
  - 19.2.5. impossibility of the use of public or private telecommunications networks; and
  - 19.2.6. the acts, decrees, legislation, regulations or restrictions of any government.
- 19.3. Our performance under the Contract will be deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

## **20. Severability**

- 20.1. If any of these terms and conditions or any provisions of the Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## **21. Entire Agreement**

- 21.1. These terms and conditions and any document expressly referred to in them represent the entire agreement between us both in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between us, whether oral or in writing.

- 21.2. We each acknowledge that, in entering into the Contract, neither of us has relied on any representation, undertaking or promise given by the other or be implied from anything said or written in negotiations between us prior to such Contract except as expressly stated in these terms and conditions.
- 21.3. Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date of any Contract (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.

## **22. Our right to vary these Terms & Conditions**

- 22.1. We have the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities.
- 22.2. You will be subject to the policies and terms and conditions in force at the time that you order services from us, unless any change to those policies or these terms and conditions is required to be made by law or governmental authority (in which case it will apply to orders previously placed by you), or if we notify you of the change to those policies or these terms and conditions before we send you the Acceptance Confirmation (in which case we have the right to assume that you have accepted the change to the terms and conditions, unless you notify us to the contrary within seven (7) working days of receipt by you of the Acceptance Confirmation).

## **23. Laws & Jurisdiction**

- 23.1. Contracts for the purchase of Services through our site will be governed by English law. Any dispute arising from, or related to, such the Contract shall be subject to the exclusive jurisdiction of the courts of England and Wales. English is the language offered for the conclusion of the contract between us both.