

## **ALTON SA'S TERMS & CONDITIONS**

### 1. Introduction

This document outlines the requirements for your web development work, hosting of your web site/s and payment schedule. They include

- the duration of the Agreement;
- fees to be paid to Alton SA;
- when Alton SA is authorised to suspend or terminate your services; and
- the process followed when resolving disputes.

### 2. Summary of our General Terms

2.1. Commencement: The Agreement will start when Alton SA are requested to register a domain on your behalf, be assigned the building/updating of your web site, provide email and/or web site hosting, as well as the taking over of an existing web site.

2.2. Acceptance of electronic invoicing: By placing an order through our website, or via email, you agree to accept electronic invoices from Alton SA for the purpose of payment dues and claiming input tax.

2.3. Changing of service: We may change the features or functionality of any Service over time.

2.4. Acceptable Use of our Services: You must read and comply with the Acceptable Use section in our Service Level Agreement (Addendum 1) that relates to your use of our Services.

2.5. Restriction of access to services: If you breach the Service Level Agreement, Alton SA may restrict your access to the Services.

2.6. Intellectual property rights: You accept that you will get no rights to the intellectual property on our systems.

2.7. In terms of POPI Compliance we pertinently request consent to use your personal information as follows:

- to enable us to collect your debit order payment; as well as
- our internal marketing and contract administration,

By signing our T&C's, you are accepting our request. Alton SA will adhere to our Privacy Policy, as well as a Protection of Personal Information Policy.

2.8. Alton SA's liability to you is limited. This means that we will not be liable to you for any damages or loss that you may suffer as a result of the fulfilment of the obligations of the terms of the Agreement.

2.9. Governing law: South African law governs this Agreement

2.10. Addresses for service: We will use the address you give us as the address to serve legal notices and documents to you.

## **ALTON SA'S SPECIFIC TERMS**

### 1. Introduction

Alton SA is a leading South African web hosting service provider that provides a range of web hosting Services to its Customers. The Services are given subject to our Hosting Terms.

### 2. Definitions

We have given the meanings of some words to be consistent. These words usually begin with a capital letter. Singular words include the plural (and vice versa):

Word    Meaning

AFSA    The Arbitration Foundation of Southern Africa (or any replacement).

Agreement    These General Terms and any specific terms that incorporate (include) these General Terms;

Customer    Is any person identified on the application form for Services or in any addendum;

Customer Data    Any username, password or email address we give the Customer as part of the Services. This excludes Customer Domains we manage as part of the Services;

General Terms    The General Terms and conditions governing the contractual relationship between the parties, supplemented by the Specific Terms;

Our Hosting Terms    Covers the General Terms, the Specific Terms, the Acceptable Use Policy, and Privacy Policy

You or your    The Customer, including a legal entity (such as a company), who enters into an Agreement with Alton SA;

Specific Terms    The terms and conditions which supplement the General Terms and govern the use of individual Services selected by the Customer;

### **3. Alton SA's Hosting Terms**

3.1. These General Terms govern the contractual relationship between us, duly supplemented by the Specific Terms.

3.2. Unless expressly provided to the contrary in our Hosting Terms, if there is a conflict in meaning, the following precedence ranking will apply (from highest to lowest): i. these General Terms; ii. the Specific Terms; iii. the Acceptable Use Policy; iv. the Privacy Policy; v. other policies that may be introduced by us from time to time which we notify you of; vi. any documents incorporated by reference in this Agreement.

#### 4. Amendment to Our Hosting Terms

4.1. Alton SA reserves the right to make changes to Our Hosting Terms at any time without notice. An updated version of our Hosting Terms will be posted on the Website.

4.2. It is your responsibility as a diligent user to check any amended Hosting Terms posted on the Website.

4.3. If you object to any amended Hosting Terms, you are entitled to terminate your relationship with us under clause 14.

#### 5. Customer Status

5.1. The Customer may be an incorporated entity (such as a company or close corporation), trust, partnership, or individual.

5.2. If a person enters into the Agreement:

- in a representative capacity on behalf of a Customer who is an incorporated entity;
- on behalf of an unincorporated entity; or
- in any other representative capacity recognised in South African law,

the person warrants that:

- they are legally authorised to do so and indemnifies Alton SA against any loss or damage that we may sustain resulting from the person's lack of authority; and
- all the information supplied to Alton SA at any time relating to the entity, trust, partnership, association or other person who they represent is true, accurate, and complete.

5.3. We reserve the right to treat all misrepresentations by you or the person representing you as fraud and the person indemnifies us against any loss or damage that we may sustain resulting from the person's lack of authority.

5.4. If we discover that you have fraudulently contracted to receive Services or that your representative has contracted without contractual capacity to do so, we may end the Hosting Terms or Services immediately without any further notice to you and you may not claim any restitution or refund of any amount you have already paid, regardless of whether you have used the Services or not.

5.5. When requested, you must give us sufficient proof of the authority of the person who takes any action or executes documents on your behalf for this Agreement. This includes providing proof that the authorised signatory of your bank account has permission to debit your account.

5.6. If there is a dispute between individuals or entities you are involved with (including partners, shareholders, trustees, employees), we may act on the representation of a person claiming to be duly authorised to represent you, without having to independently verify the authority.

5.7. You indemnify us from any action or inaction based on the representation in 5.6. If however we ask you to give Alton SA independent verification of the authority of any individual, you must provide it to us in a format we find reasonably acceptable.

## 6. Commencement and Duration

6.1. Your request for a quotation or proposal is an offer by you for Services from Alton SA. The terms relating to the acceptance of the offer are as follows:

- We will only have accepted your offer once you have confirmed it.
- You must contact us if you do not receive notification from Alton SA of Confirmation receipt within a reasonable time period.

6.2. We will conclude the agreement in Bellville, Western Cape.

## 7. Service fees

7.1. You must pay all web development, hosting & service fees, as soon as they become due.

7.2. Where applicable, we will give you a VAT invoice in electronic format. You agree that by submitting an application form to us when making application for Services, that the application is seen as your confirmation to accept electronic invoices for claiming input tax.

7.3. You must pay the service fees, according to the frequency of payment you select, as discussed with an Alton SA representative, which will be confirmed in an email.

7.4. You must pay via EFT or by debit order. Should you choose the latter, you authorise us to make the necessary transfers from your designated bank account at the beginning of the month as per your preferred frequency of payment for the duration of Our Hosting Terms. You must put the debit order in place within seven days of the Commencement Date. A rejected debit order will accrue a handling fee, per rejection.

7.5. We reserve the right to amend or vary the hosting & service fees and any amendment or variation of the service fees will be seen as an amendment of Our Hosting Terms. If we amend the service fees, Alton SA will give you at least 30 days prior notice. If you object to any amended service fees, you may terminate your relationship with us under clause 14.

7.6. You will not withhold any payment of any amount you owe us for any reason, (except for an actual breach by Alton SA of Our Hosting Terms). In addition, you may not demand any discount, refund (other than under clause 7.9), or reduction in respect of any fees you owe us.

7.7. Our fees include value added tax. You agree to pay any increase in Value Added Tax.

7.8. You may terminate the Service within:

- seven days after the Commencement Date if you decide not to continue subscribing to our Service; or
- within 30 days after the Commencement Date if we fail to meet the service levels for hosting services and email services as specified in the Specific Terms, provided that you exercise your right to end the agreement by giving us notice by email to [billing@altonsa.co.za](mailto:billing@altonsa.co.za).

If you terminate the Service for one of the above reasons, Alton SA will refund you any service fees. However you are still liable for any third party costs incurred during this period e.g. domain registration costs (please refer to clause 5 of Alton SA Specific Terms).

## 8. Monitoring

8.1. We monitor our hosting facilities, but not your specific activities. Where we have to intercept communications in accordance with the Regulation of Interception of Communications and Provision of Communication-related Information Act, 70 of 2002 ("the Monitoring Act"), we will do this according to the requirements of the Monitoring Act.

8.2. With specific regard to the monitoring of content that is found on a website that belongs to you and which is hosted by Alton SA, we have no knowledge of, nor interest in, Customer content hosted by us or published by us on your behalf using the Services and further we do not in any way contribute to or approve the content.

8.3. If however we determine that any content is in violation of any law (including the Films and Publications Act 65 of 1996) or of the Acceptable Use Policy, or if we receive a takedown notice from ISPA, as contemplated in section 77 of the Electronic Communications and Transactions Act 25 of 2002, we may:

- ask you to remove, amend, or modify the content;
- terminate access to any Services or suspend or terminate any Services without notice;
- delete the offending content without notice;
- notify the relevant authorities of the existence of any content, make any back-up, archive, or other copies of any content; or
- take any further steps as required or requested by any authorities without notice.

8.4. We may disclose any content, material, or data (including any of your data) if:

- required by law;
- lawfully asked to do so by any authorities, including the South African Police Services pursuant to a subpoena under section 186 of the Criminal Procedure Act 51 of 1977; or
- according to a judicial, administrative or governmental order. We do not have to give you notice.

8.5. You will have no recourse against us if we act under this clause and you accordingly waive your right to make any claim or demand, or to institute any legal proceedings against us.

## 9. Security

9.1. All Customer Data allocated to you is personal to you and you will be liable for any loss or damage you or third parties have suffered because of your actions or the actions of a person to whom you have disclosed your Customer Data.

9.2. You authorise us to act on any instruction given by or purporting to originate from you even if it becomes clear that both parties have been defrauded by someone else, unless you have notified us under clause 9.4 before we acted on a fraudulent instruction.

9.3. If any security violations are reasonably believed to have occurred in connection with your account, we will investigate and, if necessary, change the relevant Customer Data, including access codes and passwords, and notify you immediately.

9.4. You must tell us immediately if any other person gains access to your Customer Data by submission of email and give us your full co-operation in any investigation we carry out.

9.5. You indemnify us (hold us harmless) against any claim from:

- your disclosure of your Customer Data to a third person;
- the use of the Customer Data by a third person; or
- any resulting action by you or a third party.

9.6. We reserve the right to take any action we find necessary to preserve the security and reliable operation of our infrastructure. You may not do anything (or permit anything to be done) that will compromise our security.

9.7. We have systems in place to assist our critical technical infrastructure to recover from a natural or human induced disaster. However, we do not specify any recovery time and are not liable for any loss or damage you suffer as a result of a disaster. You must make back-ups of your data or arrange for this as a service to be implemented by Alton SA.

## 10. Warranties

10.1. We warrant that Alton SA has the facilities, infrastructure, capacity, and capability to provide the Services.

Alton SA will provide a finite amount of server space, according to the hosting package offered to the client. Our default hosting package offers 2 Gigabyte server space, which includes website and email content. This applies to all accounts, unless specified to the contrary in our quotation or subsequent package upgrade.

10.2. Despite this warranty, the Services are provided "as is" and "as available". No warranty of any kind is given, whether express or implied, including warranties of merchantability, title, or non-infringement, except where such a warranty is specifically required by law.

## 11. Intellectual Property Rights

11.1. You must comply with all laws that apply to any intellectual property.

11.2. You must get our prior written approval before using any of our marks.

11.3. You grant us non-exclusive licence to use your marks so that we may exercise our rights or fulfil our obligations under Our Hosting Terms.

11.4. Other than as specifically provided for in Our Hosting Terms, we retain all Intellectual Property Rights employed in or otherwise related to our network infrastructure, business and the provision of any of the Services under Our Hosting Terms.

11.5. You, the client represents to Alton SA and unconditionally guarantee that any elements of text, graphics, photos, designs, trademarks or other artwork provided to us for inclusion on web pages are owned by you, the client, or that you, the client has permission from the rightful owner to use each of these elements and will hold harmless Alton SA from any claim or suit arising from the use of such elements furnished by you.

## 12. Customer Indemnities

12.1. You indemnify (hold us harmless) from any liability arising from civil or criminal proceedings instituted against us or for any loss or damage you or a third party have suffered because of any interruption or unavailability of the Services.

12.2. You indemnify us and hold us harmless against all losses you have suffered or actions against us as a result of: the use of the Services, or any downtime, outage, degradation of the network, interruption in or unavailability of the Services. Included within the range of downtime, outage, degradation of the network, interruption, or unavailability of the Services is any of the following:

- software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services,



- non-performance or unavailability of any of the services given by an electronic communications network or service provider, including, line failure, or in any international services or remote mail Servers,
- non-performance or unavailability of external communications networks to which you or our network infrastructure is connected, and
- repairs, maintenance, upgrades, modifications, alterations or replacement of any hardware forming part of the Services, or any faults or defects in the hardware.

12.5. You indemnify us against any loss or damage that Alton SA may suffer because of your actions.

### 13. Suspension of the Services

Alton SA may temporarily suspend its Service to repair, maintain, upgrade, modify, replace or improve any of its Services. Where circumstances permit, Alton SA will provide prior notice of any service suspension to Customers. However, Alton SA will not be held liable for any resulting loss or damage suffered as a result of the service suspension.

### 14. Termination

14.1. Alton SA may terminate any Services on five days written notice to you.

14.2. You may terminate any Services on 30 days written notice to Alton SA in one of two ways:

- via email to [billing@altonsa.co.za](mailto:billing@altonsa.co.za);
- or to our address provided in clause 18

Irrespective of the method employed, we will confirm receipt of your communication. In the event of not receiving the same, accept that the communication was not received and should be re-submitted.

14.3. If you give Alton SA notice of termination in any manner other than as specified above you may find that the notice was invalidly given and will not have any effect.

14.4. Breach: If you breach any of Our Hosting Terms, we may, without prejudice to any other rights that Alton SA may have and without notice to you:

- claim immediate payment of all outstanding charges due to us,
- terminate or suspend your use of the Services,

- terminate our relationship with you; or
- list you with any credit bureau, Internet service provider list, or the South African Fraud Prevention Service. By agreeing to our Terms & Conditions, you expressly consent to this.

In all instances, we may retain all Services Fees you have already paid and recover all of our costs associated, including legal costs of an attorney and own client scale (you will be liable to pay our attorneys fees) with your breach.

## 15. Force Majeure

15.1. We will not be responsible for any breach of the Agreement caused by circumstances beyond our control, including fire, earthquake, flood, civil strike, compliance with government orders, failure of any supplier of electricity as well as no electronic communication service etc.

## 16. Resolving disputes

16.1. Notifying each other. A dispute concerning this Agreement exists once a Party notifies the other in writing, detailing the nature of the dispute, requesting that it be resolved as per this clause. The parties must refer any dispute to be resolved by:

- Negotiation (direct talks to try and agree how to end the dispute); failing which
- Mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- Arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

16.2. Negotiation. Each party must make sure that their chosen representatives meet within 10 business days, to negotiate and try to end the dispute by written agreement within a further 15 business days.

16.3. Mediation. If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules.

16.4. Arbitration. If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Cape Town. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

## 17. Exclusion and Limitation of Liability

17.1. Alton SA will not be responsible for any indirect, incidental, special, or consequential damages or losses arising from the Agreement. This includes loss of profits, revenue, anticipated

savings, business transactions, goodwill or other contracts. It is irrelevant if this is due to negligence (carelessness) or breach of contract.

17.2. Our total liability to you is for direct damages up to a maximum amount of:

- three months of your base hosting fee; or
- R2,500; whichever is less.

17.3. Our liability for direct damages under clause 17.2 will be excluded where we are held liable because of your use of any third party services or products which you accessed together with the Services, but which we did not provide to you.

17.4. This clause will apply even if you advised Alton SA of the possibility of loss of damage prior to its occurrence.

## 18. Notices

18.1. You must send all notices to Alton SA, whether for court process, notices or other documents or communications, at 37 Mara street, Door De Kraal, Western Cape, South Africa, 086-636-6166 (fax).

18.2. We may give all notices to you by email to the email address you provided to us on the application form when you first subscribed for the Services.

18.3. Any notice or communication required or permitted to be given under this Agreement will be valid and effective only if in writing.

18.4. All notices you sent to us which are:

- sent by prepaid registered post will be deemed to have been received 14 days after date of postage,
- delivered by hand and delivered during ordinary business hours at the physical address will be deemed to have been received on the day of delivery.

## 19. General

19.1. Entire agreement: The Agreement constitutes the entire agreement between the Parties.

19.2. No Variation: No changes to the Agreement made by Customer are effective unless in writing and signed by the authorised signatories of both parties.

19.3. Waiver (giving up rights): Any favour we may allow you will not affect [or substitute] any of our rights against you.

19.4. Severability: If any term is void (invalid), unenforceable, or illegal, the term may be severed

(removed) from and will not affect the rest of the Agreement if it does not change its purpose.

19.5. Applicable Law: South African law governs this Agreement.

19.6. Survival: Despite termination of the Agreement, any clause, which, from the context, contemplates on-going rights and obligations of the Parties, will survive the termination and continue to be of full force and effect. The Specific Terms will apply if there is any conflict of meaning with these General Terms.

## **20. Alton SA's Project Terms**

20.1 Alton SA require a deposit of 25% prior to scheduling in the required work. Once received, we will develop the specified system, according to the time scale indicated. We will request progress payments, scheduled and determined in accordance with the size and nature of the project.

20.2 Any delays in Alton SA receiving either the material for the project, as well as the required approvals of design proposals, will result in the end date being extended. Should the client not be able to supply the required content, Alton SA will arrange and charge the client the additional costs incurred in collating the content.

20.3 Your final cost does not include our rate for maintenance work. Should you require us to update your website beyond the proposed design and content, Alton SA will assist at our going hourly rate for these updates.

Should you or a third party attempt to update your website, any time taken to repair the web pages will be assessed and charged at our full hourly rate.

20.4 In the event that work is postponed or cancelled at the request of the Client, Alton SA shall have the right to bill pro rata for work completed through the date of that request, while reserving all rights under the Contract. If additional payment is due this shall be payable within thirty days of the clients notification to stop work. In the event of cancellation the Client shall also pay any expenses incurred by Alton SA and Alton SA shall own all rights to the work.

20.5 The Project will only be published to the specified domain once the Project has been signed off by the Client and final payment received.

Additional service can be requested, which will be treated separate to the initial project. This includes changes to the web sites design, content and functionality, as well as assistance with digital marketing of the project.

20.6 Payment of fees: All progress payments must be made promptly. Invoices are due upon receipt. Delinquent bills will result in the project being halted until such time that the payment is resolved. Alton SA reserves the right to remove web pages from viewing on the Internet until final payment is made.

\_\_\_\_\_ Signed at \_\_\_\_\_ on the \_\_\_\_\_ of \_\_\_\_\_ 2021

**Name :**

*Last update: 06 July 2022*