

Automatic People Ltd
Web Maintenance Terms

Web Maintenance Terms

Please read these Web Maintenance Terms carefully, as they set out our and your legal rights and obligations in relation to our web maintenance services.

You should print a copy of these Web Maintenance Terms for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our Website in future.

These Web Maintenance Terms are available in the English language only.

If you have any questions or complaints about these Web Maintenance Terms or our Services, please contact us by writing to us at the contact address on our website or by email to chesham@automaticpeople.co.uk.

AGREEMENT:

1. Definitions and interpretation

1.1 In the Agreement:

"Additional Charges" means additional charges calculated as specified on the Registration Form and payable by the Customer to the Company in accordance with Clause 3.5;

"Affiliate" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

"Agreement" means the agreement between the Company and the Customer incorporating these Web Hosting Terms and the Registration Form and any amendments to it from time to time;

"Back-up Services" means the Services described in Clause 3.4;

"Business Day" means any week day, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:30 on a Business Day;

"Charges" means the Monthly Charges and the Additional Charges;

"Company" means Automatic People Ltd, a limited company incorporated in England and Wales (registration number 3268347) having its registered office at

30 ST. GILES
OXFORD
OXFORDSHIRE
OX1 3LE

"Company Materials" means all works and materials (including text, images, video material, audio material, software, scripts, mark-ups, style sheets and databases) created by the Company and incorporated by the Company into the Website pursuant to the Agreement;

"Confidential Information" means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as "confidential", described as "confidential" or reasonably understood to be

confidential;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** will be construed accordingly);

"Customer" means the customer for Services under the Agreement specified on the Registration Form;

"Effective Date" means the date when the Agreement comes into force in accordance with Clause 2.3;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, failures of any third party internet service provider, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Helpdesk Services" means the Services described in Clause 3.1;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the Services described in Clause 3.2;

"Minimum Term" means the period of 1 Year starting on the Effective Date;

"Monthly Charges" means the amount specified as such on the Registration Form, which will be paid by the Customer to the Company in respect of each calendar month of Services in accordance with Clause 6 (save where the Term covers only part of a calendar month, in which case the amount specified will be pro-rated by the Company);

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Registration Form" means the form providing service detail provided by The Company on commencement of the Services.;

"Services" means the Helpdesk Services, the Maintenance Services, the Technical Support Services and the Back-up Services as detailed in Clause 3;

"Services Limit" means the limit to the provision of Maintenance Services and Technical Support Services specified in the on the Registration Form;

"Technical Support Services" means the Services described in Clause 3.3;

"Term" means the term of the Agreement;

"Website" means the website specified on the Registration Form; and

"Year" means a period of 365 days (or 366 days if there is a 29 February during

the relevant period) starting on the Effective Date or on any anniversary of the Effective Date.

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of the Agreement.
- 1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

2. This Agreement

- 2.1 In order to become a Customer, the applicant must be in receipt of a Registration Form issued by The Company
- 2.2 This Agreement will come into force if and when the Company sends to the Customer a completed Registration Form and the commencement date has passed.
- 2.3 This Agreement will continue in force indefinitely, unless and until terminated in accordance with Clause 12.

3. Services

- 3.1 The Company will make available, during Business Hours, an email helpdesk facility to enable the Customer to contact the Company in relation to requests for Maintenance Services and Technical Support Services. The Company will use reasonable endeavours to respond to requests for support made through the helpdesk within two Business Days.
- 3.2 Subject to Clause 3.5, upon the request of the Customer through the helpdesk, the Company will provide the following Maintenance Services to the Customer during the Term in relation to the Website in accordance with the services levels specified on the Registration Form:
 - (a) adding new content to the Website (where new content is provided by the Customer to the Company);
 - (b) effecting minor changes to the design of the Website at the direction of the Customer (the Company shall determine, acting reasonably, whether any given changes is "minor"); and
 - (c) effecting minor changes to the software and/or database comprised in the Website at the direction of the Customer (the Company shall determine, acting reasonably, whether any given changes is "minor").
- 3.3 Subject to Clause 3.5, the Company will use reasonable endeavours to attempt to:

- (a) answer technical queries relating to the Website; and
- (b) resolve faults and errors in the Website (excluding faults and errors in, or caused by: (i) any hardware, or (ii) any software or system external to the Website);

notified by the Customer through the helpdesk, in each case in accordance with the services levels specified on the Registration Form.

- 3.4 The Company will make back-ups of the Website on a daily basis, and will retain such back-ups for 5 days. The Company may also make back-ups of the Customer's email messages.
- 3.5 The Company may refuse to provide Maintenance Services and/or Support Services to the Customer during a calendar month in excess of the Services Limit.
 - (a) the Company will inform the Customer as soon as reasonably practicable that the Services Limit will be or has been exceeded;
 - (b) the Customer may extend the Service by paying to The Company an agreed Additional Charge.
- 3.6 For the avoidance of doubt, where the Customer does not utilise Maintenance Services and Support Services up to the Support Limit during a calendar month, then the unused Services capacity will not be carried over to the next period and will be permanently lost to the Customer.

4. Customer Responsibilities

- 4.1 The Customer will provide to the Company:
 - (a) the ability to access and make changes to the Website; and
 - (b) all other co-operation, information and documentation reasonably required by the Company to enable or facilitate the provision of the Services.
- 4.2 The Customer will be responsible for procuring any third party co-operation reasonably required for the provision of the other Services.

5. Intellectual Property Rights

- 5.1 The Company hereby grants to the Customer a non-exclusive royalty-free worldwide licence to use the Company Materials in connection with the Website.
- 5.2 The Company hereby waives (and will use reasonable endeavours to seek to ensure that its employees and subcontractors waive) any moral rights they may have in the Company Materials arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world.
- 5.4 The Customer hereby grants to the Company a non-exclusive royalty-free worldwide licence to use the Website for the purposes of exercising the Company's rights and fulfilling the Company's obligations under the Agreement.
- 5.5 The Customer warrants the Website (excluding the Company Materials) will not:

- (a) infringe any person's Intellectual Property Rights or other legal rights;
- (b) breach any applicable laws, regulations or legally binding codes; or
- (c) give rise to any form of legal action against the Company or the Customer or any third party.

5.6 The Customer hereby indemnifies and undertakes to keep indemnified the Company against any losses, damages, claims, obligations, liabilities, costs and expenses (including legal fees and costs and expenses incurred in investigating, preparing, defending or prosecuting any litigation, claim, proceeding or demand) arising out of or in connection with any breach of Clause 5.5.

6. Charges and payment

6.1 The Company will issue invoices to the Customer:

- (a) for the Monthly Charges, monthly in advance on the 1st day of each calendar month; and
- (b) for the Additional Charges, from time to time in arrears.

6.2 The Customer will pay the Charges to the Company within 30 days of the date of issue of an invoice issued in accordance with Clause 6.1.

6.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.

6.4 Charges must be paid by bank transfer or by cheque (using such payment details as are notified by the Company to the Customer from time to time).

6.5 If the Customer does not pay any amount properly due to the Company under or in connection with the Agreement, the Company may:

- (a) charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily and be compounded at the end of each calendar month); or
- (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998; and
- (c) make a one off late payment charge of £75 in addition to interest in respect of each late payment

6.6 The Company may vary the Monthly Charges and/or Additional Charges by giving to the Customer at least 60 days' notice of variation by an amount not exceeding the increase during the preceding 12 months in the Retail Prices Index (all items) published by the UK Office of National Statistics.

7. Warranties

7.1 The Customer warrants to the Company that it has the legal right and authority to enter into and perform its obligations under the Agreement.

7.2 The Company warrants to the Customer:

- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
- (b) that it will perform its obligations under the Agreement with reasonable care and skill.

7.3 All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

8. Limitations of liability

8.1 Nothing in the Agreement will exclude or limit the liability of either party for:

- (a) death or personal injury caused by that party's negligence;
- (b) fraud or fraudulent misrepresentation on the part of that party; or
- (c) any other liability which may not be excluded or limited under applicable law.

8.2 Subject to Clause 8.1, the Company's liability to the Customer under or in connection with the Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:

- (a) the Company will not be liable for any: (i) loss of profits, income or anticipated savings, (ii) loss or corruption of any data, database or software, (iii) reputational damage or damage to goodwill; (iv) loss of any commercial opportunity, or (v) indirect, special or consequential loss or damage;
- (b) the Company will not be liable for any losses arising out of a Force Majeure Event; and
- (c) the Company's liability in relation to any event or series of related events will in no circumstances exceed the total amount paid (or, if greater, payable) by the Customer to the Company under the Agreement during the 12 month period immediately preceding the event or series of events.

9. Data protection

9.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under the Agreement, and that the processing of that Personal Data by the Company for the purposes of and in accordance with the terms of the Agreement will not breach any applicable laws (including the Data Protection Act 1998).

9.2 The Company warrants that:

- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Company on behalf of the Customer; and
- (b) it has in place appropriate security measures (both technical and

organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Company on behalf of the Customer.

10. Confidentiality

- 10.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause 10.
- 10.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.
- 10.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
- 10.4 These obligations of confidentiality will not apply to Confidential Information that:
 - (a) has been published or is known to the public (other than as a result of a breach of the Agreement);
 - (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
 - (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

11. Force Majeure Events

- 11.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.
- 11.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:
 - (a) forthwith notify the other; and
 - (b) will inform the other of the period for which it is estimated that such failure or delay will continue.
- 11.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

12. Termination

- 12.1 Either party may terminate the Agreement at any time by giving at least 90 days' written notice to the other party expiring at any time after the end of the Minimum Term.
- 12.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

- (a) commits any material breach of any term of the Agreement, and: (i) the breach is not remediable; or (ii) the breach is remediable, but other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
 - (b) persistently breaches the terms of the Agreement.
- 12.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement);
 - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

13. Effects of termination

- 13.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 5.1, 5.6, 6.5, 8, 10, 13 and 14.3 to 14.12.
- 13.2 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.
- 13.3 If the Agreement is terminated by the Customer under Clause 12.2 or 12.3 (but not in any other case), the Customer will be entitled to a refund of any Charges paid by the Customer to the Company in respect of any Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Company (such amount to be calculated by the Company using any reasonable methodology).
- 13.4 Save as provided in Clause 13.3, the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to the Company.

14. General

- 14.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by pre-paid first class post, or sent by email, for the attention of the relevant person, and to the relevant address, email address given below in the case of the Company or specified in the Registration form in the case of the Customer (or as notified by one party to the other in accordance with this Clause).

The Company: Automatic People Ltd
31 Chiltern Avenue
Amersham
Buckinghamshire
HP6 5AE

Email: <account identifier to be allocated>@automaticpeople.co.uk

- 14.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice sent by first class post, 48 hours after posting; and
 - (c) where the notice sent by email, at the time of the transmission (providing the sending party retains written evidence of the successful transmission).
- 14.3 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 14.4 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 14.5 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 14.6 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 14.7 The Company may freely assign its rights and obligations under the Agreement without the Customer's consent. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 14.8 The Company may subcontract any of its obligations under the Agreement to any third party.
- 14.9 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 14.10 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.

14.11 Subject to Clause 8.1:

- (a) the Agreement will constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
- (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement; and
- (c) neither party will have any liability other than pursuant to the express terms of the Agreement.

14.12 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

**Information to be specified
on the Registration Form**

Website

[Insert details]

Maintenance Services – services levels

[E.g. The Company will [use [all] reasonable endeavours to] provide the Maintenance Services in accordance with the following services levels:

- (a) upload of new content time - [time period]*
- (b) changes to website design time - [time period] or as notified by the Company to the Customer*
- (c) changes to website software time - [time period] or as notified by the Company to the Customer]*

Technical Support Services – services levels

[E.g. The Company will [use [all] reasonable endeavours to] provide the Technical Support Services in accordance with the following services levels:

- (a) critical issue resolution time - [time period]*
- (b) serious issue resolution time – [time period]*
- (c) moderate issue resolution time – [time period]*
- (d) minor issue resolution time – [time period]]*

Services Limit

[Insert details – e.g. 25 person-hours per calendar month (providing that, where the Term covers only part of a calendar month, the Company will pro-rate the Services Limit applicable during that part of a calendar month).]

Minimum Term

[Insert months]

Monthly Charges

[Insert details]

Additional Charges

[Insert details – this could be an hourly rate]

Customer notice details

[Addressee, address, fax, and if necessary email address]