

101Smart Ltd

Websites and Apps Terms and Conditions

101Smart Ltd: May 2018

Terms and Conditions

This document sets out the terms and conditions (“Terms”) between (1) the Client, whose details are given on the Service Agreement and (2) 101Smart Ltd. These Terms and the associated Data Processing Agreement govern your use of 101 created Websites, Apps and other Products and Services. By using the products and services, you confirm that you accept these Terms and that you agree to abide and be bound by them. YOU MAY NOT USE THE PRODUCTS AND SERVICES UNLESS YOU AGREE TO BE BOUND BY THESE TERMS AND THE DATA PROCESSING AGREEMENT.

These 101 Conditions (together with any agreed Supplier Conditions) shall apply to any Service Agreement between 101 and the Client for the provision of 101 Products and Services and shall prevail over any inconsistent terms or conditions submitted by the Client or implied by trade custom, practice or course of dealing. In the event of conflict between these 101 Terms and Conditions and the Supplier Conditions, these 101 Terms and Conditions shall prevail.

Interpretation

101	refers to 101Smart Ltd, the provider of the products and services, and their agents
Client	refers to you, the person or organisation using 101 products and services, or their authorised agent
Data Controller	refers to the client, who determines the purpose of the data processing
Data Processor	refers to 101, which processes personal data on behalf of the controller
Data Protection Legislation	means all applicable legislation, regulations, guidelines and rules in the UK, including, without limitation, GDPR, PECR and ePrivacy
Products	refers to the 101 created websites, apps and other products and services

Products and Support

The Products are provided subject to the Service Agreement and any guidelines, rules or operating policies that 101 may establish and post from time to time. By posting updated versions of the Terms and Conditions at www.101Ltd.com, or otherwise providing notice to you. 101 may modify the Terms and Conditions and reserves the right to discontinue or revise any or all other aspects of the Products. All such changes shall become effective upon posting of the revised Terms and Conditions.

The Products are available only to persons who can form legally binding contracts under applicable law.

Use of any of the Products indicates full acceptance of these Terms and Conditions, the Service Agreement together with the Data Processing Agreement and its Annexe.

Charges, Invoices and Payment

The Client shall pay the charges for the Products in accordance with these Terms and Conditions, with any terms set out in the Service Agreement or in accordance with any other payment terms agreed in writing with 101. No work will commence until a signed Service Agreement, accompanied by any initial payment, is received by 101.

Domain names are registered on behalf of the client and in the client's name (i.e. the client retains ownership). Where a domain name(s) is already in existence, the client has the option of moving the domain to 101 or forwarding from the existing Service Provider, in either case a small charge may accrue. 101 are account holders with GoDaddy and if you register a domain with 101 you are also entering into a contract with GoDaddy. Their terms and conditions of registration can be found at <https://uk.godaddy.com/legal-agreements.aspx>.

Payment for the Products will be charged on a schedule detailed in the Service Agreement. If not stated in the Service Agreement then the usual 101 payment terms, which are 50% on initial order and 50% upon delivery of the Products, will apply.

Product hosting will be charged from the date agreed detailed in the Service Agreement, payable monthly in advance. 101 reserve the right to review Product hosting charges and to notify the Client of any additional charges which may accrue thirty (30) days before the invoice period.

Additional charges may be added external to the Service Agreement for any modifications or changes to the Service Agreement only if agreed by the Client and 101.

Where development is delayed by the customer by more than 30 days beyond the agreed completion date, the full development cost falls due.

Payment will be made thirty (30) days in advance of the supply of service. No Product will go live for public availability until the final payment has been made.

If the Client fails, for any reason, to pay any sums due to 101 then 101 reserves the right to suspend the provision of the Products to the Client until all outstanding invoices have been settled in full in cleared funds, whereupon the Product will be reinstated. In some cases, a reinstatement fee may be applicable before the Products are reactivated.

All fees paid to 101 are non-refundable, unless the account is terminated by 101 for a reason other than violation of the Data Protection Legislation or a breach of these Terms and Conditions.

All amounts and fees are exclusive of VAT, payment can be made in GBP via BACS or Cheque.

Development

All 101 Products follow a standard development structure, the schedule will be detailed in the Service Agreement.

Phase 1 of development is a basic structure agreed and design proof(s) are produced and presented for approval. Work in progress can be reviewed via a test address. At the end of Phase 1, progress is reviewed with the client to ensure design/direction and basic functions are in line with Client directives before proceeding to Phase 2.

Phase 2 of development is the creation of the Products for the client, including the build, construction and testing, as well as the inclusion and incorporation of any third-party product.

Phase 3 of development is a Client review of the Product. The Client and 101 will agree all amendments before completion. Any changes outside the Service Agreement may incur additional costs, which will be agreed before work commences.

Unless otherwise specified in the Service Agreement all client training and any associated software installation will be carried out at 101 premises. If trips to the client are required outside of the original agreement, these will be chargeable at the ruling daily rate, plus any associated travelling and accommodation expenses.

Maintenance

Updates to the Products carried out by 101 are recorded on a maintenance record held at the 101 offices. Periodically the record is reviewed and an invoice is raised for the time incurred. Recorded time is charged in 30 minute increments.

If the Products are hosted by 101 it will be disk mirrored (to cover hard disk failure at the server) and regularly backed up (daily) with copies being held both on and off site. For business-critical sites (e.g. high traffic/high trade eCommerce sites) a co-located copy of the site can be set-up on request at additional cost.

Prior to delivery all 101 Products are tested and signed off by the Client. After delivery any new faults detected will be repaired free of charge. A fault is determined by a clear break in service of a function or feature that was previously specified in the Service Agreement. Missing or non-operable features or enhancements not originally specified are not classed as faults, and accordingly 101 reserve the right to make a separate charge for such improvements. Likewise any issues or faults which occur specifically in browsers or platforms for which the Products has not been designed for will also incur additional cost to rectify.

If the Client wants a third-party to host the Product then the Client will provide 101 with the necessary information required in order to effect the transfer. A charge will be made by 101 for the time it takes to transfer the Product and for any time involved in ensuring the site works at its new location. 101 cannot be liable for any malfunction following a transfer or any losses incurred by the client during the move or for any period of dysfunction.

Restrictions and Responsibilities

The Client will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Products or any software, documentation, or data related to the Products; remove any proprietary notices or labels from the Products, modify, translate, or create derivative works based on the Products; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Products. If you are using the Products in any country in the European Economic Area, the prohibition against modifying, translating, reverse engineering, decompiling, disassembling or creating derivative works based on the Products or the Software does not affect your rights under any legislation implementing the E.C. Council Directive on the Legal Protection of Computer Programs.

You acknowledge and agree that the 101 name and logos and all related product and service names, design marks and slogans, are the property of 101. You are not authorised to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of 101.

Data Protection

The Client is the Data Controller and 101 is the Data Processor in respect of any personal data that 101 processes in the course of providing the Products. Personal data is derived from data provided by the Client and is not checked or monitored by 101. 101 has no liability or responsibility whatsoever howsoever arising directly or indirectly to the Client for the accuracy, content or use of such personal data, provided that such use is in accordance with the instructions of the Client and 101's obligations set out in the Data Processing Agreement.

The Products may only be used in compliance with all current and future Data Protection Legislation. Transmission or solicitation of any material that violates any laws that may apply in this jurisdiction or your local area is prohibited. This may include material that is obscene, threatening, harassing, libellous, or in any way a violation of intellectual property laws or a third party's intellectual property rights.

In using the varied features of the Products, you may provide information (such as name, contact information, or other registration information) to 101. 101 may use this information and any technical information about your use of the Product to tailor its presentations to you, facilitate your movement through the Service, or communicate separately with you. If you licensed the Products as a result of solicitation by a Partner of 101, 101 may share your information with that Partner. 101 will not provide information to any unauthorised third party.

101 will not use your data for any other purposes than those intended with the Products. Your data will not be shared with any other parties.

The Client is responsible for maintaining the security of any account details, passwords, and files, and for all uses of your account and of the Product in your name. 101 reserves the right to refuse registration of, or cancel, accounts it deems inappropriate.

If the Client Products are hosted by 101 then the client will use all best endeavours to ensure that all updated content does not contain any viruses or harmful code. Nor shall the client attempt any intrusive web activities whatsoever through the Products.

The Terms and Conditions of our current provider is:

<https://www.ovh.co.uk/support/contracts/>

Termination

You may terminate the Service Agreement at any time by contacting 101, at least one full quarters written notice is required. All Correspondence must include your name, and Products details. No refunds will be issued if you terminate this agreement.

101 may terminate this Agreement or the Products at any time with or without cause, and with or without notice. Upon termination by 101 for reason other than violation of Data Protection Legislation or a breach of these Terms and Conditions, 101 will provide you a proportionate refund of the advance quarterly payment based on the number of days remaining in the quarter following the date of termination. Except for such refund, 101 shall have no liability to you or any third party because of such termination. If 101 terminates this agreement because you violated Data Protection Legislation or a breach of these Terms and Conditions, no refund will be issued.

101 may delete any of your data after the date of termination. All sections of this Agreement, which by their nature should survive termination, will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability.

Warranty Disclaimer; Remedies

101 undertakes that the Products will be substantially in accordance with the Service Agreement and produced with reasonable skill and care.

Use of the Products and any reliance by you upon the Products, including any action taken by you because of such use or reliance, is at your sole risk.

101 does not warrant that the operation of the Products will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Products. The Products are provided "as is" and 101 disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose and non-infringement.

Your sole and exclusive remedy for any failure or non-performance of the Products shall be for 101 to use commercially reasonable efforts to adjust or repair the Products.

101 has no responsibility or liability for the backup of Client data and the Client remains solely responsible for making its own backups.

Limitation of Liability

To the maximum extent permitted by law, under no circumstances and under no legal theory, tort, contract, or otherwise, shall 101 or any of its underlying service providers, business partners, information providers, account providers, licensors, employees, distributors or agents be liable to you or any other person for any money damages, whether direct, indirect, special, incidental, cover, reliance or consequential damages, even if 101 shall have been informed of the possibility of such damages, or for any claim by any other party. In the event that, notwithstanding the foregoing, 101 is found liable to you for damages from any cause whatsoever, and regardless of the form of the action (whether in contract, tort (including negligence), product liability or otherwise), the liability of 101 to you will be limited to the amount you paid for the Products.

Miscellaneous

If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

101 and you agree that these Terms and Conditions, the Service Agreement and Data Processing Agreement are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under the Service Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind 101 in any respect whatsoever.

In any action or proceeding to enforce rights under the Service Agreement, the prevailing party will be entitled to recover its costs and legal fees.

CHOICE OF LAW AND DISPUTE RESOLUTION

These Terms and Conditions shall be governed and construed in accordance with English Law. Any dispute, controversy or claim arising out of or in connection with this DPA shall be subject to the exclusive and final jurisdiction of the courts of England and Wales.

In the event that the Data Controller is located in a jurisdiction where judgments rendered by the above-mentioned courts cannot be enforced, any dispute, controversy or claim arising out of or in connection with these Terms and Conditions shall be exclusively and finally settled by arbitration in accordance with the Arbitration Rules of The Arbitration Conciliation and Advisory Service (ACAS).