

GENERAL TERMS AND CONDITIONS

1. Introduction

Although these General Terms and Conditions constitute and provide for a contractual agreement between Shift Digital and our Clients, we feel that it is far more important for our Clients to first and foremost understand our core value, which is at all times to provide our Clients with a partner and service that can be trusted. Our primary goal is to not just provide our Clients with ad-hoc services but rather to become a strategic integral business partner by providing only the best services and level of service.

In essence, these General Terms and Conditions govern the relationship between Shift Digital and you, our Client. The General Terms include the Duration of the Agreement; any Applicable Fees due to Shift Digital; any required Procedures Shift Digital need to take to protect the Security, Data and Systems provided and supported; when and whether Shift Digital is Authorised to Suspend or Terminate any provided Services and the Process that will be adhered to in resolving any disputes should they arise

2. General Terms

- 2.1 **Commencement Date:** The Agreement between Shift Digital and the Client will only start when or once any required Documentation has been Signed or Deposit Paid.
- 2.2 **Service Changes:** Shift Digital may change the features or functionality of any provided Service over time where required. Should this be the case, the Client will be timeously notified by Shift Digital of any such change prior to the change.
- 2.3 **Intellectual Property Rights:** The Client accepts that they will receive or obtain no rights to intellectual property of; on; or through the Services or Systems of Shift Digital.
- 2.4 **Client Content:** The Client will at all times retain all intellectual property rights to any content provided to or hosted with Shift Digital.
- 2.5 **Personal Information:** Shift Digital may keep and record personal information pertaining to Clients and use it for specified purposes. These purposes include:
 - 2.5.1 In order to allow and enable Shift Digital to collect Client Debit Order payments.
 - 2.5.2 For Internal Marketing and Contract Administration.
 - 2.5.3 Unless it has been explicitly communicated that Shift Digital may not do this.
- 2.6 **Limited Liability: Shift Digital will not be liable to the Client for any damages or loss that may be suffered by the Client as a result of the fulfilment of the obligations of the Terms of the Agreement.**
- 2.7 **Governing Laws:** This Agreement will be governed by the laws of the Republic of South Africa.
- 2.8 **Services Address:** Shift Digital will use the address supplied by the Client as the address to serve any legal notices and documents.

3. Specific Terms

- 3.1 The Specific Terms of Shift Digital go into more detail and address specific issues around the Products and Services provided by Shift Digital.
- 3.2 These terms are an extension of our General Terms and Conditions.

OPERATIONS, HOSTING & MAINTENANCE TERMS (GENERAL TERMS)

(Last updated: April 2015)

(Previous Versions: ..., ...)

The Shift Digital Team provides a best-of-breed, leading range of business web hosting services to assist Clients in the proper operation of their web presence. From our Web Maintenance service, providing assistance with general content updates, to core infrastructure components like hosting and domain registration, to creative services like art & photography, the Web Operations component is seamlessly integrated to provide timely improvements to our Client's web presence. The Services are provided subject to the Shift Digital – Operations, Hosting, and Maintenance Terms.

1. Definitions

As a baseline, Shift Digital has provided the meaning of certain words in order to be consistent. In general, these words 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;

Domain Names

Is an easy to remember name that points directly to the Clients website. Shift Digital, through its 3rd Party Hosting Providers, offer and provide domain names as part of its Domain Service to Clients;

Client	Is any person identified on the application form for Services or in any addendum;
Client Data	Any username, password or email address including website material provided by Shift Digital as part of the Services. This excludes Client Domains that are Hosted and Managed as part of the Service.
General Terms	The General Terms and Conditions governing the contractual relationship between any parties, supplemented by the Specific Terms.
Our Operations, Hosting, and Maintenance Terms	The General Terms, the Specific Terms and Privacy Policy (NDA), all of which are available at the request of the Client.
You or Your	The Client, including a Legal Entity (such as a company), who enters into an Agreement with Shift Digital.
Specific Terms	The terms and conditions which supplement the General Terms and govern the use of individual Services selected by the Client;

2. Operations, Hosting, and Maintenance Terms

- 2.1 These General Terms govern the contractual relationship between Shift Digital and the Client, duly supplemented by the Specific Terms.
- 2.2 Unless expressly provided to the contrary of the Shift Digital - Operations, Hosting, and Maintenance Terms, if there is a conflict in meaning, the following precedence ranking will be applied (from highest to lowest)
- i. These General Terms and Conditions;
 - ii. The Specific Terms;
 - iii. The Privacy Policy
 - iv. Any Other Policy that may be introduced by Shift Digital from time to time to which we will duly notify the Client of;
 - v. Any Documents Incorporated by Reference in this Agreement.

3. Amendments to Operations, Hosting, and Maintenance Terms

- 3.1 Shift Digital reserves the right to make changes to the Operations, Hosting, and Maintenance Terms at any time without notice. In the event of such changes, an Updated Version of the Operations, Hosting, and Maintenance Terms will be made available and circulated via email.
- 3.2 It is the responsibility of the Client as a diligent user to check any amended Operations, Hosting, and Maintenance Terms circulated via email.
- 3.3 Should the Client object to any of the amended Operations, Hosting, and Maintenance Terms, the Client is entitled to make contact with Shift Digital to further discuss or alternatively should no compromise be on hand, terminate the relationship with Shift Digital under clause 13.

4. Client Status

- 4.1 The Client may be an incorporated entity (such as a company or close corporation), Trust, Partnership, or Individual.
- 4.2 If a person enters into the Agreement in a Representative Capacity on behalf of a Client who is an Incorporated Entity; on behalf of an Unincorporated Entity; or in any other Representative Capacity recognised under South Africa Law, **the person warrants that:**
 - i. **They are Legally Authorised to do so and indemnify Shift Digital against any loss or damage that Shift Digital may sustain resulting from the person's lack of authority; and**
 - ii. **All Information supplied to Shift Digital at any time relating to the Entity, Trust, Partnership, Association or other person who they represent is true, accurate, and complete.**
- 4.3 Shift Digital reserves the right to treat all misrepresentations by the Client or the Person representing the Client as fraud and the Person / Client indemnifies Shift Digital against any loss or damage that we may sustain resulting from the Person / Clients lack of authority.
- 4.4 Should Shift Digital discover that the Client has fraudulently contracted to receive Services or that the Client Representative has contracted without contractual capacity to do so, Shift Digital may end the Operations, Hosting, and Maintenance Terms or Services immediately without any further notice to the Client and the Client may not claim any restitution or refund of any amount the Client may have already paid, regardless of whether the Client has used the Services or not.
- 4.5 When and if requested, the Client must give Shift Digital sufficient proof of the authority of the person who takes any action or executes documents on the Clients behalf for this Agreement. This includes providing proof that the authorised signatory of the Client bank account has permission to debit the Clients account.

- 4.6 If there is a dispute between individuals or entities the Client is involved with (including partners, shareholders, trustees, employees), Shift Digital may act on the representation of a person claiming to be duly authorised to represent the Client, without having to independently verify the authority.
- 4.7 **The Client indemnifies Shift Digital from any action or inaction based on the representation in 4.6.** If however Shift Digital asks the Client to give independent verification of the authority of any individual, the Client must provide it to Shift Digital in a format that is reasonably acceptable.

5. Commencement and Duration

- 5.1 The Application by any Client is an Offer by the Client to accept Services from Shift Digital. The terms relating to the acceptance of the offer are as follows:
- i. Shift Digital will only accept a Clients offer once the Client has received confirmation.
 - ii. The Client must contact Shift Digital if the Client does not receive Confirmation from Shift Digital within a reasonable time period.
 - iii. Confirmation will not mean that a transaction has been concluded. It merely confirms that Shift Digital have received the application.
- 5.2 Shift Digital will conclude the Agreement in Parow, Western Cape.

6. Service Fees

- 6.1 The Client must pay all Service fees, as soon as they become due.
- 6.2 The Client must pay the Service fees, according to the frequency of payment the Client select.
- 6.3 Where applicable, Shift Digital will give the Client an invoice in electronic format. The Client agrees that by submitting an application form to Shift Digital when making application for Services, that the application is seen as the Clients confirmation to accept electronic invoices.
- 6.4 The Client must pay the service fees by EFT or Cash Deposit. The Client must pay the amounts owing by them within seven days of the Invoice Date.
- 6.5 Shift Digital reserves the right to amend or vary the Service fees and any amendment or variation of the Service fees will be seen as an amendment of Our Operations, Hosting, and Maintenance Terms. If Shift Digital amends the Service fees, Shift Digital will give the Client at least 30 days prior notice. If the Client objects to any amended Service fees, the Client is entitled to make contact with Shift Digital to further discuss or alternatively should no compromise be on hand terminate the relationship with Shift Digital under clause 13.
- 6.6 The Client will not withhold any payment of any amount the Client owes Shift Digital for any reason, (except for an actual breach by Shift Digital of Our Operations, Hosting, and Maintenance Terms). In addition, the Client may not demand any

- discount, refund (other than under clause 6.8), or reduction in respect of any service fees the Client owes Shift Digital.
- 6.7 The Service fee does not include value added tax. Should Shift Digital register for VAT, the Client agrees to pay any increase in Value Added Tax.
- 6.8 The Client may terminate the Service within:
- i. Seven [7] Days after the Commencement Date if the Client decides not to continue subscribing to the Service; or
 - ii. Within Thirty [30] Days after the Commencement Date if Shift Digital fail to meet the Service Levels for hosting services and email services as specified in the Specific Terms, provided that the Client exercise its right to end the agreement by giving Shift Digital notice by email to accounts@shiftdigital.co.za.
 - iii. If the Client terminates the Service for one of the above reasons, Shift Digital will refund the Client any service fees. **However the Client is still liable for any third party costs incurred during this period e.g. Domain Registration Costs (please refer to clause 4 of Shift Digital Specific Terms).**

7. Monitoring

- 7.1 The 3rd Party Hosting Providers of Shift Digital monitor their hosting facilities, but not Client specific activities. Where Shift Digital's 3rd Party Hosting Providers have to intercept communications in accordance with the Regulation of Interception and Provision of Communication-Related Act, 70 of 2003 ("the Monitoring Act"), its 3rd Party Hosting Providers will do this according to the requirements of the Monitoring Act.
- 7.2 With specific regard to the monitoring of content that is found on a website that belongs to a Client and which is hosted by Shift Digital's 3rd Party Hosting Providers, these 3rd Party Hosting Providers have no knowledge of, nor interest in, Customer or Client content hosted by them or published by them on the Clients behalf using the Services and furthermore do not in any way contribute to or approve the content.
- 7.3 If however Shift Digital's 3rd Party Hosting Providers 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 these 3rd Party Hosting Providers receive a takedown notice from ISPA, as contemplated in section 77 of the Electronic Communications and Transactions Act 25 of 2002, the 3rd Party Hosting Providers may:
- i. Ask the Client to remove, amend, or modify the content;
 - ii. Terminate access to any Services or suspend or terminate any Services without notice;
 - iii. Delete the offending content without notice;
 - iv. Notify the relevant authorities of the existence of any content, make any back-up, archive, or other copies of any content; or
 - v. Take any further steps as required or requested by any authorities without notice.

- 7.4 Shift Digital's 3rd Party Hosting Providers may disclose any content, material, or data (including any Client data) if:
- i. Required by law;
 - ii. Lawfully asked to do so by any authorities, including the South African Police Services pursuant to a subpoena under section 205 of the Criminal Procedure Act 51 of 1977; or
 - iii. According to a judicial, administrative or governmental order. Shift Digital's 3rd Party Hosting Providers do not have to give any Client notice.
- 7.5 Shift Digital Clients will have no recourse against our 3rd Party Hosting Providers if they act under this clause and the Client accordingly waives their right to make any claim or demand, or to institute any legal proceedings against Shift Digital 3rd Party Hosting Providers.

8. Security

- 8.1 **All Client Data allocated to the Client is personal to the Client and the Client will be liable for any loss or damage the Client or third parties have suffered because of the Clients actions or the actions of a person to whom the Client has disclosed their Customer Data.**
- 8.2 The Client authorises Shift Digital to act on any instruction given by or purporting to originate from the Client even if it becomes clear that both parties have been defrauded by someone else, unless the Client has notified Shift Digital under clause 8.4 before Shift Digital acted on a fraudulent instruction.
- 8.3 If any security violations are reasonably believed to have occurred in connection with the Clients account, Shift Digital or our 3rd Party Hosting Providers will investigate and, if necessary, change the relevant Customer Data, including access codes and passwords, and notify the Client immediately.
- 8.4 The Client must notify Shift Digital immediately if any other person gains access to the Clients Customer Data and give Shift Digital or our 3rd Party Hosting Providers their full co-operation in any investigation that may be carried out.
- 8.5 **The Client indemnifies Shift Digital (hold us harmless) against any claim arising from:**
- i. **Client disclosure of the Clients Customer Data to a third person;**
 - ii. **The use of the Customer Data by a third person; or**
 - iii. **Any resulting action by the Client or a third party.**
- 8.6 Shift Digital or our 3rd Party Hosting Providers reserve the right to take any action found necessary to preserve the security and reliable operation of our infrastructure. The Client may not do anything (or permit anything to be done) that will compromise security.
- 8.7 Shift Digital and its 3rd Party Hosting Providers have systems in place to assist the critical technical infrastructure to recover from a natural or human induced disaster. **However, Shift Digital and its 3rd Party Hosting Providers do not specify any recovery time and are not liable for any loss or damage the Client suffers as a result of a disaster. The Client must make back-ups of data. Nothing contained in**

Our Operations, Hosting, and Maintenance Terms will be seen as a representation that any back-ups of data we have implemented will be successful or in any way will assist with disaster recovery.

9. Warranties

- 9.1 Shift Digital warrant that Shift Digital and its 3rd Party Hosting Providers have the facilities, infrastructure, capacity, and capability to provide the Services.
- 9.2 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.

10. Intellectual Property Rights

- 10.1 The Client must comply with all laws that apply to any intellectual property.
- 10.2 The Client must get Shift Digital prior written approval before using any of our marks.
- 10.3 The Client grants Shift Digital non-exclusive licence to use the Clients marks so that we may exercise our rights or fulfil our obligations under Our Operations, Hosting, and Maintenance Terms.
- 10.4 Other than as specifically provided for in Our Operations, Hosting, and Maintenance Terms, Shift Digital 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 Operations, Hosting, and Maintenance Terms.

11. Client Indemnities

- 11.1 **The Client indemnifies (hold us harmless) from any liability arising from civil or criminal proceedings instituted against Shift Digital and its 3rd Party Hosting Providers or for any loss or damage the Client or a third party has suffered because of any interruption or unavailability of the Services.**
- 11.2 The Client indemnifies Shift Digital and its 3rd Party Hosting Providers and holds Shift Digital and its 3rd Party Hosting Providers harmless against all losses the Client has suffered or actions against Shift Digital and its 3rd Party Hosting Providers 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:

- i. Software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services,
 - ii. 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,
 - iii. Non-performance or unavailability of external communications networks to which the Client or Shift Digital and its 3rd Party Hosting Providers network infrastructure is connected, and
 - iv. Repairs, maintenance, upgrades, modifications, alterations or replacement of any hardware forming part of the Services, or any faults or defects in the hardware.
- 11.3 If Shift Digital are sued for something that the Client has indemnified Shift Digital for, the Client will take Shift Digital's place in the law suit or be liable to pay Shift Digital back for any costs, damages and expenses including attorneys' fees on the attorney and own client scale (the Client will be liable to pay our attorney's fees finally awarded against Shift Digital by a court or agreed to in a written settlement agreement, provided that:
 - i. Shift Digital notify the Client in writing as soon as Shift Digital becomes aware of the indemnified claim so the Client can take steps to contest it;
 - ii. The Client may assume sole control of the defence of the claim or related settlement negotiations; and
 - iii. Shift Digital will give the Client, at the Client's expense, with the assistance, information, and authority necessary to enable the Client to perform the Client's obligations under this clause.
- 11.4 The Client must pay Shift Digital any amount due under clause 11.3 as soon as Shift Digital demands payment. If the Client contests the amount, the Client must pay the amount into the Client's attorney's trust or give Shift Digital security to cover the amount, until Shift Digital have resolved the dispute.
- 11.5 **The Client indemnifies Shift Digital against any loss or damage that Shift Digital may suffer because of the Client's actions.**

12. Suspension of Services

- 12.1 Shift Digital and its 3rd Party Hosting Providers may temporarily suspend its Service to repair, maintain, upgrade, modify, replace or improve any of its Services. Where circumstances permit, Shift Digital and its 3rd Party Hosting Providers will provide prior notice of any service suspension to Clients. However, Shift Digital and its 3rd Party Hosting Providers will not be held liable for any resulting loss or damage suffered as a result of the service suspension.

13. Termination

- 13.1 Shift Digital may terminate any Services on five days written notice to the Client.
- 13.2 The Client may terminate any Services on 30 Days written notice to Shift Digital in one of two ways:
- i. via email to accounts@shiftdigital.co.za;
 - ii. or to our address provided in clause 17
- 13.3 If the Client gives Shift Digital notice of termination in any manner other than as specified above the Client may find that the notice was invalidly given and will not have any effect.
- 13.4 **Breach:** If the Client breaches any of Our Operations, Hosting, and Maintenance Terms, Shift Digital may, without prejudice to any other rights that Shift Digital may have and without notice to the Client:
- i. Claim immediate payment of all outstanding charges due to Shift Digital,
 - ii. Terminate or suspend the Clients use of the Services,
 - iii. Terminate Shift Digital's relationship with the Client; or
 - iv. List the Client 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.
 - v. In all instances, we may retain all Services Fees the Client has already paid and recover all of Shift Digital's costs associated, including legal costs on an attorney and own client scale (the Client will be liable to pay Shift Digital attorney's fees) with the Client's breach.
- 13.5 **Retention of hardware or software:** Where Shift Digital are in possession of any hardware or software that belongs to the Client as a result of the provision of Services, and the Client is in default of the Client's payment obligations to Shift Digital, Shift Digital may retain the hardware or software ("Property") until the Client has settled all amounts owed to Shift Digital. Where the Client fails to make payment of all amounts owed to Shift Digital within 60 days of Shift Digital giving the Client notice, Shift Digital may dispose of the Property to cover any expenses as well as any amounts the Client owes Shift Digital.
- 13.6 **Return of hardware or software:** Where the Client has in the Client's possession any of Shift Digital's hardware or software as a result of using the Service and the related Service ends; the Client must immediately return the hardware or software to Shift Digital.

14. Force Majeure

- 14.1 Shift Digital will not be responsible for any breach of the Agreement caused by circumstances beyond Shift Digital's 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.

15. Resolving Disputes

- 15.1 **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:
- i. Negotiation (direct talks to try and agree how to end the dispute); failing which
 - ii. Mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
 - iii. Arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).
- 15.2 **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.
- 15.3 **Mediation:** If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules.
- 15.4 **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.

16. Exclusion and Limitation of Liability

- 16.1 **Shift Digital 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.**
- 16.2 **Shift Digital's total liability to the Client is for direct damages up to a maximum amount of:**
- i. **Three months of the Client's base Operations, Hosting and Maintenance fee; or**
 - ii. **R2, 500.00; whichever is less.**
- 16.3 Shift Digital's liability for direct damages under clause 16.2 will be excluded where Shift Digital are held liable because of the Client's use of any third party services or products which the Client accessed together with the Services, but which Shift Digital did not provide to the Client.
- 16.4 This clause will apply even if the Client advised Shift Digital of the possibility of loss of damage prior to its occurrence.

17. Notices

- 17.1 The Client must send all notices to Shift Digital, whether for court process, notices or other documents or communications, at 4 Regency Crescent, Leopard Rock Estate, Platteklouf IV, Parow, Cape Town 7500, South Africa, 086 295 5341 (fax).
- 17.2 Shift Digital may give all notices to the Client by email to the email address the Client provided to Shift Digital on the application form when the Client first subscribed for the Services.
- 17.3 Any notice or communication required or permitted to be given under this Agreement will be valid and effective only if in writing.
- 17.4 All notices the Client sends to Shift Digital which are:
- i. Sent by prepaid registered post will be deemed to have been received 14 days after date of postage,
 - ii. 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.

18. General

- 18.1 **Entire Agreement:** The Agreement constitutes the entire agreement between the Parties.
- 18.2 **No Variation:** No changes to the Agreement made by the Client are effective unless in writing and signed by the authorised signatories of both parties.
- 18.3 **Waiver** (giving up rights): Any favour Shift Digital may allow the Client will not affect [or substitute] any of Shift Digital's rights against the Client.
- 18.4 **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.
- 18.5 **Applicable Law:** South African law governs this Agreement.
- 18.6 **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.
- 18.7 The Specific Terms will apply if there is any conflict of meaning with these General Terms.