

Web Hosting Services: Service Level Agreement

This Service Level Agreement (“Agreement”) is made [insert date] between Fat Hosting Limited (Registered No: 6813205) whose registered address is 12 Spring Garden Street, Lancaster, Lancashire, LA11RQ (“Fat Hosting”) and [Insert Customer Name] (Registered No: [Insert Customer Number]) whose registered address is [Insert Customer Address] (“Customer”). This Agreement provides the general terms and conditions applicable to Customer’s purchase of Fat Hosting Web Hosting Services (“Service”) from Fat Hosting and as defined on the attached Customer Order.

ARTICLE 1. ORDERS FOR AND DELIVERY OF SERVICE

- 1.1 Submission and Acceptance of Customer Order(s).** Customer may submit requests for Service in a form designated by Fat Hosting (“Customer Order”). Customer Orders shall contain the duration for which Service is ordered (“Service Term”), a description of the Service, and the applicable non-recurring charges and monthly recurring charges for the Service. Service will continue on a month to month basis at the expiration of the Service Term at Fat Hosting’s then current rates until terminated by either party upon 30 days’ prior written notice to the other party. Fat Hosting will notify Customer of acceptance of the Customer Order by delivering (in writing or electronically) the date by which Fat Hosting will install Service (the “Customer Commit Date”) or by delivering the Service. Renewal Customer Orders will be accepted by Fat Hosting’s continuation of Service. If Customer submits Customer Orders electronically, Customer shall assure that any passwords or access devices are available only to those having authority to submit Customer Orders. Customer will pay Fat Hosting’s then current charges for moves, adds or changes agreed to by Fat Hosting in respect of any Customer Order or Service. The terms of this Agreement apply to the Services provided as defined in the attached Customer Order and do not replace terms for other Services provided on behalf of Fat Hosting.
- 1.2 Credit Approval and Deposits.** Customer will provide Fat Hosting with credit information as requested and delivery of Service is subject to credit approval. Fat Hosting may require Customer to make a deposit as a condition of Fat Hosting’s acceptance of any Customer Order or continuation of: a) usage-based Services; or b) non-usage based Service where Customer fails to timely pay Fat Hosting hereunder or Fat Hosting reasonably determines that Customer has had an adverse change in financial condition. Deposits will not exceed 2 months’ estimated charges for Service and are due upon Fat Hosting’s written request. When Service is discontinued, the deposit will be credited to Customer’s account and the balance refunded.
- 1.3 Scheduled Maintenance and Local Access.** Scheduled maintenance will not normally result in Service interruption. If scheduled maintenance requires Service interruption, Fat Hosting will: (i) provide Customer 5 Business Days prior written notice (where Business Days are defined as Monday to Friday between 09:00 and 17:00, excluding any public or bank holidays), (ii) work with Customer to minimise such interruptions and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time in the country where the Service is provided to Customer.

ARTICLE 2. BILLING AND PAYMENT

- 2.1 Commencement of Billing.** Fat Hosting will, but are not obligated to, deliver written or electronic notice to Customer when Service is installed, has been tested and is functioning properly (a “Connection Notice”) at which time billing will commence (“Service Commencement Date”). If Customer notifies Fat Hosting within 3 business days after delivery of the Connection Notice that Service is not functioning properly, Fat Hosting will correct any deficiencies and, upon Customer’s request, credit Customer’s account in the amount of 1/30 of the applicable monthly recurring charges (MRC) for each day the Service did not function properly. If Fat Hosting cannot complete installation due to Customer delay or inaction, Fat Hosting may begin charging Customer for the Service and Customer shall pay such charges which will appear on Customer’s first invoice following the Service Commencement Date.
- 2.2 Payment of Invoices and Disputes.** Invoices are delivered monthly and due 30 days after the invoice date. Fixed charges are billed in advance and usage-based charges are billed in arrears. Billing for partial months is prorated. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Customer is responsible for all charges in respect of the Service, even if incurred as the result of unauthorized use. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice in dispute. If the dispute is resolved against Customer, Customer shall pay such amounts plus interest from the date originally due.
- 2.3 Taxes and Fees.** Excluding taxes based on Fat Hosting’s net income, Customer is responsible for all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service, including but not limited to value added, consumption, sales, use, gross receipts, withholding, excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory surcharges), whether imposed on Fat Hosting or a Fat Hosting affiliate, along with similar charges stated in a Customer Order (collectively “Taxes and Fees”). Some Taxes and Fees and the costs of administering the same, are recovered through imposition of a percentage surcharge(s) on the charges for Service. If Customer is required by law to make any deduction or withholding of withholding Taxes from any payment due hereunder to Fat Hosting, then, notwithstanding anything to the contrary contained in this Agreement, the gross amount payable by Customer shall be increased so that, after any such deduction or withholding for such withholding Taxes, the net amount received by Fat Hosting will not be less than Fat Hosting would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Customer may present Fat Hosting with an exemption certificate eliminating Fat Hosting’s liability to pay certain Taxes and Fees; Fat Hosting will give effect thereto prospectively.

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2.4 If changes in applicable law, regulation, rule or order materially affect delivery of Service, the parties will negotiate appropriate changes to this Agreement. If the parties cannot reach agreement within 30 days after Fat Hosting's notice requesting renegotiation: (a) Fat Hosting may, on a prospective basis after such 30 days period, pass any increased delivery costs on to Customer and (b) if Fat Hosting does so, Customer may terminate the affected Service on notice to Fat Hosting delivered within 30 days. affiliate, along with similar charges stated in a Customer Order (collectively "Taxes and Fees"). Some Taxes and Fees and the costs of administering the same, are recovered through imposition of a percentage surcharge(s) on the charges for Service. If Customer is required by law to make any deduction or withholding of withholding Taxes from any payment due hereunder to Fat Hosting, then, notwithstanding anything to the contrary contained in this Agreement, the gross amount payable by Customer shall be increased so that, after any such deduction or withholding for such withholding Taxes, the net amount received by Fat Hosting will not be less than Fat Hosting would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Customer may present Fat Hosting with an exemption certificate eliminating Fat Hosting's liability to pay certain Taxes and Fees; Fat Hosting will give effect thereto prospectively.

2.5 Cancellation and Termination Charges.

- (a) Customer may cancel a Customer Order (or portion thereof) prior to the Service Commencement Date upon written notice to Fat Hosting identifying the affected Customer Order and Service. If Customer does so, Customer shall pay Fat Hosting a cancellation charge equal to the sum of:
- (i) 1 month's monthly recurring charges for the cancelled Service;
 - (ii) the non-recurring charges for the cancelled Service; and
 - (iii) Fat Hosting's out of pocket costs (if any) incurred in constructing facilities necessary for Service delivery.
- (b) Customer may terminate specified Service(s) after the Service Commencement Date upon 30 days' written notice to Fat Hosting. If Customer does so, or if Service is terminated by Fat Hosting hereunder as the result of Customer's default, Customer shall pay Fat Hosting a termination charge equal to the sum of:
- (i) all unpaid amounts for Service actually provided;
 - (ii) 100% of the remaining monthly recurring charges for months 1-12 of the Service Term;
 - (iii) 50% of the remaining monthly recurring charges for month 13 through the end of the Service Term; and
 - (iv) if not recovered by the foregoing, any termination liability payable to third parties resulting from the termination, and any out of pocket costs of construction to the extent such construction was undertaken to provide Service hereunder. Customer acknowledges that the charges in this Section are a genuine estimate of Fat Hosting's actual damages and are not a penalty.

2.6 Pricing. Fat Hosting reserve the right to change license pricing stated on the Customer Order (including but not limited to operating system and database licenses) subject to any third party pricing changes. Due to this Fat Hosting may at anytime alter the recurring Service cost payable by Customer provided at least 30 days notice is given.

ARTICLE 3. DEFAULT

3.1 Termination. If

- (a) Customer fails to make any payment when due and such failure continues for 5 business days after written notice from Fat Hosting, or
- (b) either party commits a material breach of this Agreement and such breach continues for 30 days after written notice from the other party, or
- (c) either party is unable to pay its debts or enters into liquidation (except for the purposes of a solvent amalgamation or reconstruction) or makes an arrangement with its creditors or becomes subject to an administration order or a receiver or administrative receiver is appointed over all or any of its assets, or ceases or threatens to cease carrying on its business or is dissolved or any equivalent procedure in any other jurisdiction occurs in relation to that party, then the non-defaulting party may, upon written notice terminate this Agreement and/or any Customer Order, in whole or in part.

3.2 Suspension. If Fat Hosting is entitled to terminate this Agreement and/or any Customer Order in accordance with 3.1(A), 3.1(B), or 3.1(C) above, Fat Hosting may suspend, in whole or in part, Customer's Service(s), without prejudice to Fat Hosting's right to terminate this Agreement or any Customer Order. Customer shall remain liable to pay all charges in respect of the suspended Service(s) during any period of suspension.

ARTICLE 4. LIABILITIES AND SERVICE LEVELS

4.1 No Special Damages. Except as set out in Article 4.2, but notwithstanding any other provision, neither party shall be liable for any loss (whether direct or indirect) of profits, revenues, business, goodwill, anticipated savings, customers, data or arising out of interference with business or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or in connection with this Agreement or any Customer Order or any other cause whatsoever, including breach of contract, breach of warranty, tort (including negligence), or strict liability.

4.2 Unlimited Liability. Nothing in this Agreement shall be construed as limiting the liability of either party for,

- (a) personal injury or death resulting from the negligence of a party or its employees,
- (b) for fraud or fraudulent misrepresentation by a party or its employees,
- (c) breach of Article 6.8 (Confidentiality), and
- (d) any liability of either party which cannot be excluded by law.

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4.3 Service Levels. The “Service Level” commitments applicable to Services are contained in Article 5 of this document. If Fat Hosting does not meet a Service Level, a credit will be issued to Customer as stated in Article 5 on Customer’s request. Fat Hosting’s maintenance log and trouble ticketing systems are used to calculate Service Level events. To request a credit, Customer must contact Fat Hosting (via email at hostingsupport@fatmedia.co.uk or via telephone at 01539 734 900) or deliver a written request (with sufficient detail to identify the affected Service) within 30 days after the end of the month in which the event occurred. Total monthly credits will never exceed the charges for the affected Service for that month. Save where the Customer has the right to terminate this Agreement in accordance with Article 3.1, Customer’s sole remedies for any non-performance, outages, failures to deliver or defects in Service are contained in the Service Levels applicable to the affected Service.

4.4 Liability Limitation. Subject to Article 4.1, 4.2 and 4.3, Fat Hosting’s total aggregate liability in respect of any claim, loss or damage, whether arising from tort (including negligence), breach of contract, breach of warranty or otherwise under or in connection with this agreement shall in no event exceed 100% of all charges paid during the 12 month period immediately prior to which the relevant claim arises.

4.5 Disclaimer of Warranties. Except as provided in the Agreement, all representations, warranties or other terms whether express or implied, by statute or otherwise, including (without limitation) any implied terms or conditions as to condition, quality, performance or fitness for purpose of the Service, are excluded to the fullest extent permitted by law.

ARTICLE 5. SERVICE LEVEL AGREEMENTS

5.1 Service Guarantee. Fat Hosting guarantee to provide Fat Hosting Hosting Services at a level of 99.99% uptime.

5.2 Service Availability. Availability will be calculated in respect of faults that cause a total loss of Service (defined as a “Critical Fault”) to Customer. Service Availability is calculated from the time the Critical Fault is reported by the Customer (according to the trouble ticket timestamps) to the time it is closed as being resolved or fixed (according to the trouble ticket timestamps) and Service is no longer subject to the reported Critical Fault. Force majeure events and scheduled maintenance under section 1.3 will not form part of the reported Service Availability for the purposes of Service Credits or otherwise. Service Availability will be calculated to the nearest two decimal places. For the avoidance of doubt examples of rounding to 2 decimal places are as follows:

- (i) 99.984% would be rounded to 99.98%; and
- (ii) 99.985% would be rounded to 99.99%.

5.3 Service Credits. In the event that Fat Hosting fail to meet the Service Availability and this is reported by Customer (in accordance with section 6.4) to Fat Hosting within 30 days of the fault, Customer may be eligible for Service Credit discounts, which are payable against the next Customer invoice.

Service credits will be calculated according to the following Service Availability:

Service Availability	Service Credit Discount
100% to 99.99%	Agreed service level
99.98% to 99.50%	1% of monthly service fee
99.49% to 99.00%	3% of monthly service fee
98.99% to 95.00%	5% of monthly service fee
94.99% to 90.00%	10% of monthly service fee
89.99% to 80.00%	20% of monthly service fee
79.99% to 60.00%	50% of monthly service fee
59.99% and lower	100% of monthly service fee

The maximum Service Credit discount for any one month is 100% of the monthly service fee. The discount will apply to the recurring monthly charges and not to any non-recurring charges or one off setup fees. Customer negligence or wilful misconduct, or the negligence or wilful misconduct of others authorised by the Customer will render requests for monthly Service Credits invalid.

5.4 Service Resolution Time. Fat Hosting will respond to and aim to fix all reported issues according to the following resolution times:

Fault Level	Response Time	Fix Time
Minor	24 Business Hours	48 Business Hours
Major	12 Business Hours	24 Business Hours
Critical	4 Actual Hours	12 Actual Hours

A Business Hour is defined as an hour falling between 09:00 and 17:00 between Monday to Friday (inclusive), but not including Public Holidays or Bank Holidays. An Actual Hour is defined as an hour falling at any time of the day, 7 days per week, 365 days per year. A critical fault is defined as an issue that causes a total loss to Service, resulting in downtime to Customer website or primary online services. A major fault is defined as an issue that results in partial loss to Service, resulting in downtime to areas of a Customer website or other online services. A minor fault is defined as a fault that does not affect provision of the Service.

If during the fault investigation Fat Hosting identify that the problem lies with Customer or any third party contracted by Customer then the Service Resolution Time shall not apply, nor shall any inclusion of this fault be considered when calculating Service Availability.

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5.5 Fault Reporting. Fat Hosting will monitor Services during Business Days. In the event that Customer detects a fault with the Service then this should be reported to Fat Hosting immediately. Customer must carry out an initial diagnosis of the fault prior to contacting Fat Hosting. This will ensure that all faults reported to Fat Hosting lie within Fat Hosting's domain. Faults will be logged with Fat Hosting together with the fault level (as defined in section 5.4).

In the case of all faults contact should be made via telephone to Fat Hosting Head Office at 01524 548 948. Customer should request to speak to Support Team who can verify the nature of the fault. If the fault is related to the provision of Hosting Services a trouble ticket will be logged.

When the Service has been fully restored, Fat Hosting will contact Customer to confirm the fault closure details. During a recorded fault, Customer may contact Fat Hosting at any time for a progress update on the fault. To enable timely and efficient diagnosis and resolution of all suspected faults, Fat Hosting requires a minimum level of information from Customer when the problem is first reported. This includes but is not limited to:

- (i) contact name and details of person reporting the fault;
- (ii) description of the fault;
- (iii) how long the fault has been active; and
- (iv) details of any tests or preliminary diagnosis carried out by Customer in attempting to localise the problem before reporting to Fat Hosting.

ARTICLE 6. GENERAL TERMS

6.1 Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control ("force majeure event"). Neither party shall not be deemed in default of this Agreement, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of the Party, provided that the Party relying upon this provision:

- (i) gives prompt written notice thereof, and
- (ii) takes all steps reasonably necessary to mitigate the effects of the force majeure event. If a force majeure event extends for a period in excess of 30 consecutive days, either Party may immediately terminate this Agreement upon written notice.

In the event Fat Hosting is unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay Fat Hosting for the affected Service for the duration of the event. As stated in section 5.2, Force majeure events and scheduled maintenance under section 1.3 will not form part of the reported Service Availability for the purposes of Service Credits or otherwise.

6.2 Assignment and Resale. Customer may not assign its rights or obligations under this Agreement or any Customer Order without the prior written consent of Fat Hosting, which will not be unreasonably withheld. Fat Hosting may, after having given prior written notice to the Customer, assign and transfer any or all of its rights and obligations under this Agreement to an affiliate of Fat Hosting. This Agreement shall apply to any permitted transferees or assignees.

Unless otherwise provided in a Service Schedule but always subject to applicable sanctions and export control regulations, Customer may provide Service to third parties or use the Services in connection with goods or services by Customer to third parties ("Customer Provided Services") provided that Customer shall indemnify, defend and hold Fat Hosting and its affiliates harmless from any claims arising from or related to any Customer Provided Services. Nothing in this Agreement, express or implied, confers upon any third party any right, benefit or remedy under or by reason of this Agreement.

6.3 Affiliates. Service may be provided to Customer by an affiliate of Fat Hosting, and Fat Hosting may use third parties to provide certain aspects of the Service, but Fat Hosting shall remain responsible to Customer for the delivery and performance of the Service. Customer's affiliates may purchase Service pursuant to this Agreement, and Customer shall be jointly and severally liable for all claims and liabilities related to Service ordered by any Customer affiliate.

6.4 Notices. Notices shall be in writing and will be delivered personally, or sent by first class post (and air mail if overseas), or by facsimile, pre-paid overnight courier, or electronic mail (if an e-mail address is provided) addressed as follows (this includes billing inquiries/disputes, requests for Service Level Credits and/or requests for disconnection of Service):

If to Fat Hosting	If to Customer
Fat Hosting Limited, 12 Spring Garden St, Lancaster, LA11RQ	[Insert Customer Address 1] [Insert Customer Address 2] [Insert Customer Town/City] [Insert Customer Postcode]
Attention	Attention
IT Manager	[Insert Customer Contact]
Email	Email
hostingsupport@fatmedia.co.uk	[Insert Customer Email]

If no Customer address is provided above, notices may be provided to any electronic or physical address identified on the Customer Order. Either party may change its notice address upon notice to the other party. All notices shall be deemed given on (i) the date delivered if delivered personally, by facsimile or e-mail (or the next business day if delivered on a weekend or legal holiday), (ii) the business day after dispatch if sent by overnight courier, or (iii) the third business day after dispatch if otherwise sent. If contact information is not given or if Customer contact changes without appropriate notice to Fat Hosting, no liability shall remain with Fat Hosting to notify Customer as per any relevant section of the Agreement.

6.5 Acceptable Use Policy. Customer's use of Service shall comply with Fat Hosting's Acceptable Use Policy and Privacy Policy, as communicated in writing to Customer from time to time and which are also available upon request.

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6.6 Data Protection. In this Agreement, the words ‘data processor’, ‘data controller’, ‘personal data’ and ‘traffic data’ shall have the meanings set out in the applicable data privacy laws and regulations.

- (a) During the performance of this Agreement, it may be necessary for Fat Hosting to process and store billing, utilization, traffic and other data necessary for the operation of its network and for the performance of its obligations under this Agreement. In the event Fat Hosting has access to and otherwise processes personal data, Customer agrees that Fat Hosting (or its affiliates) may use such data and other Customer data, in accordance with applicable law and regulation, for the performance of Fat Hosting’s obligations and the exercise of Fat Hosting’s rights under this Agreement.
- (b) Where the Services include Fat Hosting Hosting Services, Fat Hosting will collect and process traffic data to provide the Services and improve the performance of those Services over time. Customer may withdraw consent to the processing of traffic data at any time by serving notice of termination of those Services in accordance with Article 2.5.

6.7 Intellectual Property and Publicity. Neither party is granted a license or other right (express, implied or otherwise) to use any trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of the other party or its affiliates without the express prior written authorization of the other party. Neither party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the parties in writing.

6.8 Confidentiality. Either party may disclose (Disclosing Party) to the other party (Receiving Party) Confidential Information of the Disclosing Party. ‘Confidential Information’ means without limitation, any information which is identified as confidential at the time of disclosure, the content of this Agreement and any information which ought reasonably to be regarded as confidential. Confidential information does not include information that:

- (a) is in the possession of the Receiving Party without any obligation of confidentiality prior to disclosure by the Disclosing Party;
- (b) is published or becomes available to others, without restriction and without breach of this Agreement by the Receiving Party;
- (c) becomes available to the Receiving Party from others who are not in breach of any obligation of confidence; and
- (d) is developed by the Receiving Party independent of and without use of the Confidential Information. The Receiving Party shall:
 - (i) use Confidential Information only to perform its obligations under this Agreement;
 - (ii) not disclose the Confidential Information without the prior written consent of the Disclosing Party, other than to its employees, Affiliates, consultants, subcontractors and advisors who have a need to know and are bound by similar confidentiality obligations; and
 - (iii) protect Confidential Information in the same manner as it protects its own confidential information. The obligations under this Section 6.8 shall continue for a period of two (2) years after termination or expiry of the Agreement.

6.9 Governing Law; Entire Agreement; Amendment. This Agreement shall be governed and construed in accordance with the laws of England and Wales, without regard to its choice of law rules. This Agreement, including any Service Schedule(s) and Customer Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior written or oral agreements relating to the Service. The parties confirm that no reliance has been placed upon and the parties shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than as set forth in this Agreement. The terms and conditions of this Agreement apply to the Service to the exclusion of any other terms that the Customer seeks to impose or incorporate including, without limiting the foregoing, any terms and conditions set forth on a Customer-provided purchase order. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

6.10 Order of Precedence. In the event of any conflict between this Agreement, the Term of any Service Schedule and/or Customer Order, the order of precedence is;

- (i) The Service Schedule;
- (ii) this Agreement; and
- (iii) the Customer Order.

6.11 Subcontracting. Fat Hosting may, without consent, subcontract the provision of a Service, or a portion of a Service, provided that Fat Hosting will continue to be liable for the performance of such subcontractors in accordance with the terms of this Agreement.

6.12 Relationship; Third Parties and Counterparts. The relationship between the parties is not that of partners, agents, or joint venturers. Nothing in this Agreement shall confer upon any third party any right, benefit or remedy of any nature under this Agreement. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. Digital signatures and electronically exchanged copies of signed documents shall be sufficient to bind the parties to this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date as shown.

Fat Hosting Limited (“Fat Hosting”)

Signature: _____

Name: _____

Title: _____

Date: _____

[Insert customer name] (“Customer”)

Signature: _____

Name: _____

Title: _____

Date: _____