

# Dedicated, Shared and Virtual Server Hosting Terms and Conditions

Last updated: February 2018

These are the standard terms and conditions of NetXtra Limited (“we”, “us” or “our”) of Linden Square, 146 Kings Road, Bury St Edmunds, IP33 3DJ upon which we will provide you the customer named in the attached schedule (“you” or “your”) with hosting and associated services.

## 01. Definitions and interpretation

1.1 In these terms and conditions the following words and phrases shall have the following meanings unless the context requires otherwise:-

“Acceptable Use Policy”	Our acceptable use policy as amended by us from time to time;
“Agreement”	The agreement between you and us for the provision of the Services as set out in these Conditions;
“Applications”	Code used to develop your site;
“Available”	Means available for access by you and third parties via the Internet;
“Business Day”	A day (other than a Saturday or Sunday) on which the clearing banks are open for business in the City of London;
“Commencement Date”	The date at which the system becomes hosted on the server and members of the public may access the site directly via the principal URL for which the long-term use of the site was designed;
“Conditions”	These terms and conditions including those set out in the Proposal and Contract Documentation;
“Fees”	The fees payable to us for the provision of the Services as varied by us pursuant to these Conditions together with any fees we may collect pursuant to these Conditions;
“Hosting Services”	The provision by us to you of Web Space on one or more of our Servers to store your website (including installation) and the direction (pointing) of your designated URL(s) to that Web Space, as set out in the Proposal and Contract Documentation;
“Internet”	The global computer network comprising of interconnected networks using standard set of rules that regulate the way data is transmitted between computers;
“Platform”	Our web application framework;
“Proposal and Contract Documentation”	Formal numbered and dated Netxtra Ltd quotation(s) and/or Proposal(s), which are referenced in specifications and/or

	contractual NetXtra Ltd client agreements which have been approved or signed by You or your representative;
“Server”	Any server or group of servers owned or operated by or on behalf of us;
“Services”	The Hosting Services and any other related and agreed services as specified in the Proposal and Contract Documentation;
“Web Page”	Each individual screen display accessible on a website commonly referred to as a page;
“Website”	A site at which text, graphics, data, files and information are stored electronically on web pages and Server and access to which is made available to third parties via the Internet;
“Web Space”	The agreed amount of space including an allocation of storage space on a server and a bandwidth allocation as set out in the Proposal and Contract Documentation.

- 1.2 Unless the context otherwise requires references to Conditions and the Proposal shall be construed as references to Conditions of and the Proposal to these Conditions.
- 1.3 Headings are inserted for convenience only and shall not affect the construction or interpretation of these Conditions.

## 02. The Services

- 2.1 In consideration of you paying to us the Fees in accordance with the provisions of these Conditions we will provide you with the Services.

## 03. Your Obligations

- 3.1 You are responsible in all respects for the content of your website and you undertake that any and each individual Web Page contained in your website does not and will not violate any applicable law.
- 3.2 You will obtain and be responsible for obtaining and complying with all necessary permissions, consents, authorizations, licenses to use and display any and all of the content included on the Web Pages of your website;
- 3.3 You will:-
- 3.3.1 ensure that your website does not and will not contain any Web Page liable to offend or containing links to unlawful material;
- 3.3.2 will immediately inform us by e-mail and letter if any of your contact details set out in the Proposal and Contract Documentation change.

- 3.4 You will at all times comply with our Acceptable Use Policy.
- 3.5 You acknowledge that we do not warrant any response rate or download time in so far as this depends on factors outside our control such as but not limited to overall Internet traffic, the size of files being downloaded, the connection speed, denial of service attacks, hardware and software employed by the end user.

## 04. Our rights and obligations

- 4.1 Subject to Condition 4.2 below we will use all reasonable endeavours to ensure that, with effect from the Commencement Date:
  - 4.1.1 the Server on which your website is stored remains securely stored at suitably equipped premises or facility.
  - 4.1.2 the website is and will remain stored on the Server;
  - 4.1.3 the Server is and will remain connected to and accessible via the Internet with sufficient bandwidth where under the control and jurisdiction of NetXtra Ltd to ensure performance of the site in accordance with the requirements set out in the Proposal and Contract Documentation;
  - 4.1.4 the Server remains in good and working order and condition to enable it to comply with its obligations under Condition 4.1; and
  - 4.1.5 the website is and remains Available 99.5% of the time to be calculated in accordance with Condition 4.7, and shall monitor our compliance with our obligations under Conditions 4.11 to 4.1.5.
- 4.2 4.2 You accept and acknowledge that compliance with Conditions 4.1.3 and 4.1.5 may be affected by events beyond our reasonable control (including but not limited to faults caused by the acts or omissions of the network provider and/or the availability of the underlying telecommunications systems and/or denial of service attacks and/or authorised or unauthorised access to the server(s) by 'you' or 'your' authorised third parties) and you agree that in no circumstances will we have any liability in respect of such events.
- 4.3 We shall from time to time, carry out routine maintenance work in respect of the Server and associated systems equipment used in provision of the Services to ensure that they remain in good and working order and condition, provided that:
  - 4.3.1 we comply with our obligations under Condition 4.9, where applicable, for so long as such routine maintenance work is being carried out; and

- 4.3.2 such routine maintenance work does not cause the website to be unavailable or inaccessible.
- 4.4 We may need to carry out maintenance which causes the website to be unavailable or inaccessible for a limited period of time. We will advise you at the time at which such maintenance occurs and if possible give you prior notice of it.
- 4.5 We will as soon as reasonably practicable on or after the Commencement Date (if applicable) provide you with a user identification(s), password(s) for the Web Space. We do not accept any liability in respect of any loss incurred as a result of disclosure of your password(s).
- 4.6 Subject to you paying the Fees we may supply to you on or before the 6th day of each month a statement in such form as we decide of access and usage of your website and the amount of time expressed as a percentage that your website was Available during the preceding month and provided further that we will not be responsible for the accuracy of the information relating to such access and usage nor for any failure of any counters to accurately record such information or be reset.
- 4.7 The percentage level of availability shall be calculated using the following formula:-

$$A = ((T-D)/T) \times 100$$

where:

A = Availability (%)

T = Time period during which availability is calculated

D = Downtime during time period 'T'

to the extent that the website is not Available as a result of any act or omission on your part or as a result of the factors contemplated in Condition 4.2 such failure will not be taken into account in the calculation of Availability but will be recorded and specified in the report provided to you pursuant to Condition 4.6.

- 4.8 If the report provided to you pursuant to Condition 4.6 indicates an Availability percentage of less than 99.5% in any given month we will provide you with a credit against the Fees payable by you for the following month as follows:

Percentage Compliance	Multiple of the Fees to be credited during any applicable month
100.00% - 99.50%	N/A
Less than 99.50%	50% of monthly fee

- 4.9 In the event that the website is at any time unavailable or inaccessible to end users as a result of any problem whatsoever with the Server on which it is stored, we will as soon as reasonably practicable, so as to ensure that such unavailability or inaccessibility is minimised as far as possible, transfer the website to another Server.
- 4.10 In the event that access to your website exceeds the permitted bandwidth or storage allocation of the web space (forming part of the website) as provided in the Proposal and contract documentation, we will be entitled to:
- 4.10.1 move the website to a higher performance service; and/or
  - 4.10.2 increase the Fees to take account of the additional bandwidth or web space being used; and /or
  - 4.10.3 charge any penalty fees or other incurred costs.
- 4.11 Notwithstanding any other provision we will be entitled without notice at any time to change the bandwidth or storage allocation of the Web Space and to make any changes to the Hosting Services which are necessary to comply with any applicable safety, security or other statutory requirements, or which do not materially affect the nature or quality of the Services.
- 4.12 If the website is in breach of our Acceptable Use Policy or acting unreasonably and we consider that it is necessary to do so we shall be entitled to:-
- 4.12.1 suspend access to the website for such period as we shall consider fit;
  - 4.12.2 remove all or any part of the website from our Servers; and/or
  - 4.12.3 delete all or any data, files or other information that is stored on our Server on which the website is stored, and in all instances should we consider it necessary to act pursuant to Condition 4.12 we shall inform you or your representative at the earliest opportunity of the nature of the Acceptable Use Policy breach and the nature of our action.
- 4.13 We reserve the right in our sole discretion and without prior notice to suspend your use of any scripts or Server based programs that may have a detrimental effect on the performance or security of our Servers.
- 4.14 We will back up all relevant data daily, weekly and monthly. Two tapes are cycled every Friday and stored in a fire resistant safe. A monthly tape is also cycled and stored off site.
- 4.15 We will provide 24hours a day, 7 days a week engineer support coverage. Our engineers will be notified of any outages within 5 minutes of the outage being detected.

## 05. Financial Provisions

- 5.1 Subject to the provisions of these Conditions we shall be entitled to invoice you annually in advance for the Fees for the relevant Services and otherwise as specified in the Proposal and Contract Documentation you shall pay the Fees due and any additional sums without any set off or other deduction. We will at our sole discretion be entitled to charge such additional fees as a result of your instructions or lack of instructions, the inaccuracy of any material provided by you or any other cause attributable to you.
- 5.2 All invoices are payable net 30 days from receipt.
- 5.3 All of our Fees and charges are exclusive of any Value Added Tax or other sales tax, for which you shall be additionally liable at the applicable rate from time to time.
- 5.4 We may increase the Fees stated in the Proposal and Contract Documentation from time to time where such increases are necessary to maintain the current level of service or as otherwise agreed between both parties.
- 5.5 If payment is not made on the due date, we shall be entitled, without limiting any other rights we may have, to charge interest on the outstanding amount both before and after any judgement at an annual rate of 4 per cent above the base rate of Lloyds Bank plc from time to time or such other clearing bank nominated by us and such interest will be calculated on a daily basis and will accrue from the due date until the outstanding amount is paid in full.

## 06. Confidentiality and proprietary rights

- 6.1 Save as otherwise provided, the property and any copyright or other intellectual property rights in:-
  - 6.1.1 any material supplied by you shall remain your property
  - 6.1.2 any materials, procedures and data supplied by us shall remain our property.
- 6.2 You warrant that any material supplied by you and its use by us for the purpose of providing the Services will not infringe the copyright or other rights of any third party, and you will indemnify us (on a full indemnity basis) against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 6.3 The parties to this Agreement acknowledge that during the term of this Agreement each may have access to material and information which is proprietary, confidential and/or a trade secret of the other including, without limitation, information relating to the website or to other's operations, processes, plans or intentions, product information, know-how, design rights,

trade secrets, market opportunities and business affairs (“Confidential Information”).

6.4 The parties to this Agreement will:

6.4.1 not use, copy, reproduce or otherwise deal with such Confidential Information for a purpose other than the performance of its obligations under this Agreement;

6.4.2 not disclose Confidential Information to a person except with the prior written consent of the other, except information which:

(a) is required to be disclosed by law, by a court of competent jurisdiction or by a regulatory body with authority over its business;

(b) is at the date of this Agreement or at any time after the date of this Agreement comes into the public domain other than through breach of this Agreement by the party gaining the information;

(c) can be shown by the party gaining the information to have been known by that party before disclosure to it; or

(d) subsequently comes lawfully into the possession of that party from a third party.

6.4.3 Return any documents or other physical or electronic items embodying any Confidential Information to the other, or destroy such documents on termination of this Agreement.

6.5 During the term of this Agreement each party may disclose Confidential Information to its employees or agents to the extent reasonably necessary for the purposes of this Agreement.

6.6 The parties to this agreement shall ensure that each person who receives Confidential Information pursuant to this Condition is made aware of and complies with the obligations of confidentiality under this Agreement as if that person were a party to this Agreement.

## 07. Non solicitation

Both parties hereby undertake that during the currency of this Agreement and for a period of six months following its termination for whatever reason, neither party will not directly or by an agent or otherwise and whether for either party or for the benefit of any other person employ any of our officers or employees or induce or endeavour to induce any of the other parties officers or employees to leave his or her employment.

## 08. Warranties and liability

8.1 We warrant to you that the Hosting Services will be provided using reasonable care and skill.

8.2 We will have no liability to you for any loss, damage, costs, expenses or other claims for compensation arising from any material or instructions supplied by you which are incomplete, incorrect, inaccurate, illegible, out of sequence or

in the wrong form, or arising from their late arrival or non-arrival, or any other fault of you.

- 8.3 We will have no liability to you for any loss, damage, costs, expenses or other claims for compensation arising from any exercise of our rights or remedies under this agreement including without limitation the suspension of access to your website or deletion, corruption, loss or removal of data, file or material stored on your website or removal of your website from the Server or instructions supplied by you which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of you.
- 8.4 Except as expressly provided, we will not be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term for any loss of profit or any indirect, special or indirect loss, damage, costs, expenses, loss of anticipated profits or expected future business, damage to reputation or goodwill, loss of any order or contract, loss of data, business, interruption or damages or costs payable by you to any third party or other claims (whether caused by our negligence or that of our servants or agents or otherwise) which arise out of or in connection with the provision of the Hosting Services or their use by you, and our entire liability under or in connection with this agreement pursuant to the terms of this agreement shall not exceed the amount of the price payable by you for the Hosting Services.
- 8.5 We shall effect and maintain (for so long as the same continues to be available generally in the market at commercially reasonable rates) with reputable insurance company (which is properly authorised under all appropriate United Kingdom statutes or statutory provisions to provide insurance services) professional indemnity insurance for a minimum of £1,000,000 any one claim and shall maintain such insurance during the carrying out of the Services and for a period of 3 years from the date of Practical Completions of the Project.
- 8.6 As and when it is reasonably requested to do so by you, we shall produce for inspection documentary evidence that the insurance policy is being maintained. In the event that we are unable to secure or maintain the insurance policy we shall forthwith give notice to you to that effect.

## 09. Termination

- 9.1 **Dedicated Server Hosting:** The conditions shall come into force upon the Commencement Date and shall (unless terminated earlier by either party in accordance with the provisions of this agreement) continue in force for a period of a minimum of 2 years and thereafter until terminated by either party giving the other not less than 90 days notice of the termination or until the end of the third year, whichever occurs sooner. It is not possible to warrant the hosting provided on hardware which is more than 3 years old and therefore it is necessary to enter a new agreement with new hardware provisioned.
- Shared and Virtual Server Hosting:** The conditions shall come into force upon the Commencement Date and shall (unless terminated earlier by either party

in accordance with the provisions of this agreement) continue in force for a period of a minimum of 1 year and thereafter until terminated by either party giving the other not less than 90 days notice of the termination.

- 9.2 Either party shall be entitled to terminate this Agreement immediately by written notice to the other party if:
- 9.2.1 the other party commits a material breach of any material provision of this Agreement and fails (in the case of any such breach which is capable of being remedied) to remedy the same within 30 days from receipt of a written notice specifying the nature of such breach and requiring the other party to remedy the same;
  - 9.2.2 an encumbrancer takes possession or a receiver is appointed over any of the property or the assets of the other party;
  - 9.2.3 the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
  - 9.2.4 the other party goes into liquidation or if any steps are taken to liquidate the other party (except for the purpose of an amalgamation or a reconstruction and in such a manner that the entity resulting there from effectively agrees to be bound by the terms and Conditions of this Agreement);
  - 9.2.5 the other party ceases or threatens to cease to carry on business; or
  - 9.2.6 the other party suffers any similar or analogous action to those set out in Conditions 9.2.1 to 9.2.4 above.
- 9.3 Any termination of this Agreement will be without prejudice to any other rights or remedies a party may be entitled to there under or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision thereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 9.4 Upon termination of this Agreement for whatever reason all outstanding fees and expenses owed by you to us whether under this Agreement or under any other agreement or arrangement shall forthwith become due and payable.
- 9.5 Subject as otherwise provided herein to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.
- 9.6 Any termination of this Agreement shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after that termination.
- 9.7 On termination of this Agreement you shall at your own expense immediately return to us, or as we may alternatively instruct, dispose of, all copies of all documents, papers, specifications, handbooks, instructions and computer

programs whatsoever and all other property of our being in your possession or under your control and not intended under the terms of this Agreement to remain in your possession, and you shall certify in writing to us that the same has been done.

## 010. Miscellaneous

- 10.1 Nothing in these Conditions shall create or be deemed to create a partnership or the relationship of employer and employee or principal and agent between the parties.
- 10.2 If any provision of these Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of these Conditions which shall remain in full force and effect.
- 10.3 You are not entitled to assign delegate transfer or otherwise dispose of your rights and obligations hereunder without our prior written consent.
- 10.4 The waiver by us of a breach or default of any of the provisions of these Conditions by you shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of us to exercise or avail ourself of any right, power or privilege that we have or may have, hereunder operate as a waiver of any breach or default by you.
- 10.5 A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement, or by law, prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 10.6 Nothing in this Agreement shall create any third party rights.

## 011. Notice

- 11.1 All communications between the parties with respect to these Conditions shall be delivered by hand or sent by first class prepaid post (or if the recipient is in another country by prepaid airmail) to the relevant address(es) stated in these Conditions or to such other address as the addressee may from time to time have notified for the purpose of, in accordance with and making specific

reference to this Condition, or sent by facsimile transmission or electronic mail.

11.2 Communications shall be deemed to have been received:-

11.2.1 if sent by first-class post: two Business Days after posting (or seven business days if sent by prepaid mail) exclusive of the day of posting;

11.2.2 if delivered by hand: on the day of delivery;

11.2.3 if sent by facsimile transmission or electronic mail at the time of transmission.

11.3 In proving service:-

11.3.1 by delivery by hand: it shall be necessary only to produce a receipt for the communication signed by or on behalf of the addressee;

11.3.2 by electronic mail or facsimile transmission: it shall be necessary only to prove receipt by the sender of a transmission note or transmission message confirming that the mail message or transmission was duly sent to the correct address/fax number of the recipient.

11.3.3 by first class post: it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this Condition

## 012. Indemnity

You hereby undertake to us that you will, without prejudice to any other right of action which we may have, at all times keep us fully and effectively indemnified against any liability (which liability shall include, without limitation, all losses, costs, claims, expenses, demands, actions, damages, legal and other fees and expenses on a full indemnity basis) which we may suffer or incur as a result of, or by reason of, any breach or non-fulfillment of any of your obligations under these Conditions, any breach of third party intellectual property rights or the use by you of the Services.

## 013. Data Protection

13.1 Terms defined in the Data Protection Act 1998 have the same meanings when used in this Condition 13.

13.2 Each party to this Agreement shall:

13.2.1 In connection with this Agreement comply in all respects with the Data Protection Acts 1994 and 1998 (as modified or re-enacted or both from time to time) and any

subordinate legislation made under with the Data Protection Acts 1994 and 1998 from time to time (together the “Data Protection Legislation”); and,

- 13.2.2 not, by any act or omission, place the other in breach of the Data Protection Legislation.
- 13.3 Where either party acts as a data processor in relation to personal data in relation to which the other is the data controller, the data processor shall:
  - 13.3.1 process those personal data only on the instructions of the other party;
  - 13.3.2 take appropriate technical and organisational measures against unauthorised or unlawful processing of those personal data and against accidental loss or destruction of, or damage to, those personal data; and
  - 13.3.3 take such steps and actions as the data controller may require to enable the data controller to comply with its obligations under the Data Protection Legislation.
- 13.4 The data controller instructs the data processor in relation to personal data to take such steps in the processing of those personal data as:
  - 13.4.1 the data controller reasonably considers necessary or desirable for the performance of the data processor’s obligations under this Agreement; and
  - 13.4.2 are consistent with the performance of that party’s obligations under this Agreement and the Data Protection Legislation.

## 014. Law

These Conditions shall be governed by the laws of England. The parties hereby irrevocably submit to the nonexclusive jurisdiction of the English Courts.

## 015. Force Majeure

- 15.1 If either party is prevented or delayed in the performance of any of its obligations under the Agreement by any cause preventing it from performing any or all of its obligations which arises from or is attributable to acts events omissions or accidents beyond the reasonable control of the party so prevented (“Force Majeure”) that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure and shall subject to service of such notice have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events.
- 15.2 If either party is prevented from performance of its obligations by reason of Force Majeure for a continuous period in excess of three months the other party may terminate the Agreement forthwith on service of written notice upon the party so prevented in which case neither party shall have any liability to

the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

- 15.3 The party claiming to be prevented or delayed in the performance of any of its obligations under the Agreement by reason of Force Majeure shall use its reasonable endeavours to urgently bring the Force Majeure event to a close or to urgently find a solution by which the Agreement may be performed despite the continuance of the Force Majeure event.