

# Canvasflow Terms of Service

Updated: July 4<sup>th</sup>, 2018

***IF YOU DO NOT AGREE TO THESE TERMS YOU MUST NOT USE, ACCESS OR PURCHASE ANYTHING FROM THE COMPANY***

Canvasflow or "the Company") has expertise in the provision of responsive content authoring and design, multi-channel platform integration, content transformation and the operation, hosting and maintenance of cloud-based platforms.

These terms and conditions ("the Agreement") is the contract between you ("the Client") and the Company to purchase Canvasflow software and use the Services of the Company.

You must read the Agreement carefully as you will be asked to expressly agree to them before you can register on the Company Website and purchase any of the Products and Services.

If you have a query regarding any of the Services, please contact us.

## 1. Definitions

Unless expressly stated otherwise the following definitions shall apply to the terms used in this Agreement:

**"Support"** is amongst one of the Services provided by the Company, which means all the help material provided by the Company accessible via the Company Website including, but not limited to, help prompts, knowledgebase, getting started guides, and FAQs;

**"Client", "you" and "your"** means you together with any company or other business entity you are representing (if any);

**"Client Content"** means all materials created, supplied and developed by the Client whilst using the Companies Services;

**"Commencement Date"** means the date of this Agreement;

**"Company", "Canvasflow"** is registered under company number 0986492 with registered office at Mill House, High Road, Epping, Essex, CM16 4DY;

**"Company Website"** means the website of the Company which advertises and sells the Services and Software in accordance with this Agreement;

**"Confidential Information"** means all information passing from one party to the other party relating to the business of the disclosing party (whether disclosed before or after the date of this Agreement), including but not limited to trade secrets, drawings, know-how, techniques, source code and object code, business and marketing plans and projections, arrangements and agreements with third parties, client information, formulae, suppliers, concepts not reduced to material form, designs, plans and models;

**"Existing Clients"** means clients who have made one or more purchases (including, without limitation, by means of the Company Website or otherwise) or Services generally sold by the Company;

**"Expenses"** means the out of pocket expenses incurred by the Company in acquiring anything reasonably necessary for it to perform the requirements imposed on it by this Agreement;

**"Insolvent"** means the occurrence of all or any of the following events:

- a. any meeting of creditors of the Client being held or any arrangement or
- b. composition with or for the benefit of any of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986 ("the Act")) being proposed or entered into by or in relation to the Client; or
- c. a supervisor receiver administrator administrative receiver provisional liquidator interim receiver mortgagee chargee or other incumbrancer taking possession of or being appointed in respect of the whole or any part of the Assets of the Client or a trustee in bankruptcy being appointed in respect of the Client or any of its assets; or
- d. the Client ceasing the carrying out of his or its business as a whole or becoming unable to pay its debts within the meaning of Section 123 Section 222 Section 223 Section 224 or Section 268 of the Act; or
- e. a meeting being convened for the purpose of considering any resolution for the making of proposals for a voluntary arrangement the winding up bankruptcy or dissolution of the Client; or
- f. the presentation or making as the case may be of a petition for an administration order or a winding up petition whether under part IV or part V of the Act or otherwise or a petition under Section 164 of the Act or application for an interim order under Part VIII of the Act

**"Intellectual Property"** means all intellectual property rights anywhere in the world (including present and future intellectual property rights) relating to any Confidential Information, business names and logos, copyright, database rights, patents, trade or service marks, designs, software, computer data, generic rights, software and source code and all variations, modifications or enhancements to each of them together with any application or right to apply for registration or protection of those rights;

**"Interest Rate"** means interest at a rate equal to 4% per annum above the base lending rate from time to time of Lloyds Bank plc;

**"Materials"** means all materials owned by the Company used in the provision of the Services, including software and source code;

**"New Clients"** means clients who (i) are directed to the Company Website or otherwise; and (ii) register their details in order to open an account through the Company Website pursuant to such redirection; and (iii) are not Existing Clients at the date of such registration;

**"Online Conduct Policy"** means the policy setting out the terms and conditions on which the Client agrees to utilise the Company Website, network, systems, products and Services;

**"Personnel"** means any employees, agents or contractors of the Company;

**"Service Fee"** means the fee for Services as set out in clause 7 to be paid by the Client for the purchase of Services from the Company under this Agreement;

**"Term"** means the period between the Commencement Date and the end date of this Agreement as specified in clause 12 of this Agreement; and

**"the Services"** means the services which may be provided by the Company to the Client under this Agreement which include, without limitation, Assistance, hosting, maintenance, and backup which may be varied at any time by the Company with or without notice.

**2. In this Agreement, unless the context otherwise requires:**

1. Clause, schedule and paragraph headings do not affect the interpretation of this agreement;
2. A reference to a clause or a schedule is a reference to a clause of, or schedule to, this agreement. A reference to a paragraph is to a paragraph of the relevant schedule, and a reference to an appendix is to the relevant appendix to this agreement;
3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns;
4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated;
5. Words in the singular include the plural and, in the plural, include the singular;
6. A reference to one gender includes a reference to the other gender;
7. A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it;
8. Writing or written includes e-mail;
9. Documents in agreed form are documents in the form agreed by the parties to this agreement and initialled by them or on their behalf for identification;
10. Where the words include(s) including or in particular are used in this agreement, they are deemed to have the words "without limitation" following them;
11. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done
12. Other and otherwise are illustrative and shall not limit the sense of the words preceding them
13. Headings have been inserted for convenience only and shall not affect the interpretation of this Agreement.
14. All orders for Software and Services from you accepted by the Company are subject exclusively and strictly to the following conditions and no alterations proposed by you shall be binding unless we agree in writing.

**3. Company's Obligations**

1. The Company gives no warranty that access to the Company Website or any site operated by the Company in connection with this Agreement shall be uninterrupted or error-free.

2. In the event of any such interruptions to the Company Website, or Services, the Company shall notify the Client by e-mail as soon as reasonably practicable of any such interruption and to its ability to rectify the same.
3. The Company agrees to rectify faults or problems and to restore the system to full operational capacity as soon as reasonably practicable.
4. The Company shall be responsible for order entry, payment processing, and provision of the Services, Materials and Links, as well as related client services.
5. The Company agrees and warrants that it will at all times observe and comply with the provisions and obligations imposed by the Data Protection Act 1998, and shall maintain an appropriate privacy policy (viewable here)
6. It is acknowledged and agreed by the Client that both New and Existing Clients who buy products or services from the Company will be clients of the Company and their details will form part of the Company's Confidential Information.
7. The Company shall ensure that it has sufficient, suitable Personnel to perform its obligations under this Agreement, and if the Personnel are temporarily unavailable or unable to perform this Agreement, the Company will immediately notify the Client.
8. If the Client contacts the Company via the support channel in relation to a platform fault, within 48 hours the Company shall conduct testing of the platform and Services and report to the Client any problem. The Company reserves the right to extend this timeframe indefinitely for trial accounts.
9. The Company may in its absolute discretion sub-contract the performance of any of its obligations under this Agreement.
10. The Company may modify the Services in accordance with clause 11 on giving reasonable notice to the Client.

#### **4. Client's Obligations**

The Client agrees and undertakes to:

1. observe and perform all of its obligations under this Agreement;
2. design and develop Client generated content in accordance with this Agreement and in accordance with any lawful requests and directions of the Company from time to time during the Term;
3. allow the Company and its representatives access to Client content at all times to enable the Company or its representatives to monitor the platform;
4. maintain appropriate privacy policies and to comply in all respects with the Data Protection Act 1998;
5. comply with all third-party terms and conditions related to the Services provided by the Company;
6. accept, observe and be bound by any third-party terms and conditions relating to the Company Website and Services, and acknowledge that a separate contractual relationship has been created between the Client and the third party, and that the Client and not the Company, is responsible for all liability, and obligations in connection with that relationship;

7. not hold the Company responsible for any actions or inaction of any third party under a contract referred to in clauses 3.7 and 3.8 or the unavailability or malfunction of their network or services;
8. not to access or attempt to access password protected, secure or non-public areas of the Company Website or Services, except with the Company's written Consent. Otherwise, the Client may be liable for prosecution.
9. The Client acknowledges that the Company's systems, servers, and equipment may from time to time be inoperative or only partly operational as a consequence of mechanical breakdown, maintenance, hardware or software upgrades, telecommunication connectivity problems or other causes outside its control.
10. The Client is only eligible to use the Companies Services during the Term and will not be entitled to do so after the expiration or termination of this Agreement.
11. The Client shall provide, at its own cost, all telecommunications services, computers and other equipment or services necessary to enable it to have access to the Company Website and Services.
12. The Client must comply with all the rules and regulations that apply to the communications network or system by which the Client obtains access to the Company Website and Services.
13. The Client undertakes not to sub-license or charge others to use or access the Services without having received the prior written consent of the Company to do so.

#### **5. Client Content**

1. The Company will not be responsible for the accuracy and/or functionality of the Client Content in the form in which it is provided by the Client or as modified upon and in accordance with the Client's instructions.
2. If the Company reasonably forms the view that the Client Content may be pornographic, defamatory, misleading or deceptive or otherwise in breach of any third party's rights or in contravention of applicable law, the Company may without prior notice or any liability remove that Client Content and shall within twenty-four hours thereafter notify the Client of its removal. The Company reserves the right to remove the client content if, on notification, the Client refuses to remove the offending material.

#### **6. Company Website Discussion Boards**

1. As part of the Services, the Company may provide its Clients with an appropriate forum or discussion board to enable Clients to disseminate and exchange thoughts and provide an alternative communication facility with other users and the public.
2. The Client shall observe and perform all the terms and conditions of the Company in relation to the discussion boards.
3. The Company cannot be responsible for the appropriateness, accuracy, sufficiency, correctness, veracity, completeness or timeliness of information disclosed and shared on any Company discussion boards.

4. The Client further acknowledges that it should always use caution when posting any information which can personally identify a third party (be it another Client or its employees) on discussion boards or any other online site or forum.

## **7. Price and Payment**

1. The Client shall pay the Company the Services Fee, Expenses and VAT or other taxes payable (together known as "the Invoice") in accordance with clause 7 for the purchase of the provision of the Services.
2. The Services Fee is calculated subject to the length of Term selected by the Client when purchasing Services.
3. The Company reserves the right to change the Service Fee and Expenses (which includes but is not limited to increasing prices and charging a fee for upgrades and/or Services for which the Company does not currently charge a fee for).

## **8. Intellectual Property Rights**

1. Ownership of and Intellectual Property in all Client Content remains vested at all times in the Client.
2. Ownership of pre-existing Intellectual Property used in the creation of Client content will remain vested at all times in the party who is the owner of such pre-existing Intellectual Property.
3. Any pre-existing or other Intellectual Property rights owned by either party and required for the performance by the other party of its obligations under this Agreement shall be licensed to that other party in accordance with clause 9 to this Agreement.
4. The Client acknowledges and agrees that the Company will own all Intellectual Property in connection with the Company's Materials and that all other Intellectual Property in Materials produced or created by the Company or on its behalf or provided by the Company will remain permanently with the Company regardless of whether such Material is in its original form or in a form modified for the Client's use.
5. The Client acknowledges and agrees that the content contained in advertisements or information presented to him through the Company Website and the Services is protected by applicable copyrights, trademarks, service marks, patents and other proprietary rights and laws
6. The Client may not modify the Company's Materials for any purpose without the prior written consent of the Company.

## **9. Licences and Title**

1. The Client agrees that any Materials, works, items or information of whatever nature produced or developed by the Company or under the Company's direction pursuant to or in the course of providing the Services shall remain the sole and complete property of the Company, whether such property is tangible or is in the nature of Intellectual Property (including copyright and rights of Confidential Information).

2. The Client may not alter, modify, or change the Licensed Materials in any way without the prior written approval of the Company and agrees to immediately discontinue such use at such time as this Agreement is terminated. The Company reserves all of its rights in the Licensed Materials and of the Company's other proprietary rights.
3. The Company may terminate the licence at any time forthwith upon written notice to the Client, in which event this Agreement will also terminate automatically.
4. Any licence created under this Agreement shall terminate upon expiration or termination of this Agreement. Upon termination of this Agreement for whatever reason, the Client shall immediately destroy and delete all Licensed Materials and certify to the Company that the Client has done so.
5. Neither party shall grant a sub-licence under the licences created pursuant to this clause without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

#### **10. Marketing**

1. The parties acknowledge and agree that the Company may use the Client's names, logos, domain names and trademarks for the purpose of marketing the Company Website and Services, subject to Client's approval.

#### **11. Change of Services**

1. The Company may from time to time make any change(s) to the Services it provides and shall notify the Client by email specifying what the required change(s) is/are within a reasonable period.

#### **12. Term**

1. This Agreement shall be for a Term of a minimum of twelve months from the Commencement Date as agreed by the Client when making its order to purchase the Company Software and Services unless otherwise terminated pursuant to its terms.

#### **13. Warranties**

1. Each party warrants to the other that it has authority to enter into and to perform its obligations under this Agreement.
2. The Company makes no express or implied warranties or representations whatsoever to the Client with respect to the Company Website and/or the Services, Materials, Links or otherwise for the Client's purposes other than those conditions, warranties, undertakings or representations expressly set out in this Agreement.
3. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied under Part II of the Supply of Goods & Services Act 1982) are excluded from the terms of this Agreement to the fullest extent permitted by law.
4. The Company shall not be liable for the consequences of any interruptions or errors in respect of the Company Website and/or the Services, Materials, Links or otherwise.



5. The Company hereby represents and warrants to the Client that it is the sole and exclusive owner of the Licensed Materials and that it has the right and power to grant to the Client the licence to use the Licensed Materials Marks.
6. The Client hereby represents and warrants to Company that it is the sole and exclusive owner of the Affiliate Trade Marks and that it has the right and power to grant to Company the licence to use the Affiliate Trade Marks.

#### **14. Indemnity**

1. The Client hereby agrees and undertakes to indemnify and hold harmless the Company and its associated companies and affiliates and partners, and their respective directors and employees, against any and all claims, actions, demands, liabilities, losses, damages, judgements, settlements, costs and expenses (including legal fees and costs) (any or all of the foregoing hereinafter referred to as "Losses") insofar as such Losses arise out of or are based on: (i) the operation, maintenance and contents of the Client material; (ii) any claim that the Company use of the Affiliate Trade Marks infringes on any trade mark, trade name, service mark, copyright, licence, intellectual property, or other proprietary right of any third party; (iii) any misrepresentation by the Client or a representation or warranty or breach of a covenant or agreement made by the Client ; or (iv) any claim related to the Client, including, without limitation, content therein not attributable to the Company.
2. The Client shall indemnify and hold harmless the Company and its affiliates, employees, agents, contractors, directors, officers and third-party providers from all liabilities, demands, costs and expenses (including legal expenses) arising in connection with any Client Content including but not limited to the posting and/or transmission of Client Content.
3. The Company shall indemnify the Client in respect of any loss, damage, liability, costs or expenses incurred by the Client by reason of the unauthorised disclosure of personal data or any breach of the Data Protection Act 1998.

#### **15. Limitation of Liability**

1. Notwithstanding anything to the contrary, nothing in this Agreement excludes or limits the Company's liability for personal injury or death caused by the Company's negligence or for fraud.
2. The Company will not be liable for any indirect, special, or consequential damages, or any loss of revenue, profits, business or data, arising out of or in connection with this Agreement, even if the Company has been advised of the possibility of such damages. In no event will the Company's aggregate liability arising out of or in connection with this Agreement exceed the total Service Fee paid by the Client during the period of the Term immediately preceding any claim in that respect.
3. The Company shall not be liable for defects resulting from improper use of the Company Services by the Client or by another third party.



## 16. Early Termination

In order for the Client to terminate this Agreement, you:

1. must email the Company to confirm its request to cancel this Agreement;
2. should then receive an email from the Company confirming early termination of this Agreement and requesting payment of any outstanding Service Fees, Expenses or any costs whatsoever (including the applicable early termination fee);
3. must pay the Company any outstanding Service Fees, Expenses or any costs whatsoever (including the applicable cancellation fee) incurred before the Company agrees to terminate this Agreement;
4. must provide the Company with the following information:
5. the Client's email address;
6. the part of the Services the Client would like to terminate (if applicable); and
7. the reason for early termination of this Agreement (or any part of the Services).
8. The Company may, in its sole discretion, refuse to commence, complete or deliver any work or otherwise comply with the provisions of this Agreement on the Company's part and/or terminate this Agreement or any part of the Services it provides to the Client for any reason including, without limitation, if the Client:
9. fails to make payments in accordance with Clause 7; and/or
10. fails to remove the Client Content immediately in accordance with Clause 4.2; and/or
11. breaches any of its obligations under this Agreement; and/or
12. becomes Insolvent.
13. The Company reserves the right to charge the Client an early termination fee.
14. Upon termination of this Agreement by either party for any reason, the Company reserves the right to:
15. collect all charges, fees, commitments and obligations incurred by the Client;
16. delete any Client Content, listings, messages or other information relating to the Client.
17. prohibit the Client's access to the Client account; and
18. refuse the Client future access to the Services.

## 17. Confidentiality

1. All Confidential Information (including, without limitation, the terms of any business contract between the parties and financial information, client and vendor lists and pricing and sales information), disclosed by either of the parties (the "Disclosing Party") to the other party (the "Receiving Party") pursuant to this Agreement shall be confidential.
2. The Receiving Party shall maintain the confidentiality of all such information and shall not, without the prior written consent of the Disclosing Party (i) utilise the same, directly or indirectly, for its own business purposes or for any other purpose or (ii) disclose the same to any third party. This clause does not apply to any information in the public domain or which is required to be disclosed pursuant to an order issued by a court of competent

jurisdiction or applicable law or regulation or which is disclosed by the Receiving Party to its professional advisors on a confidential basis.

3. Each party may use the Confidential Information of a disclosing party only for the purposes of this Agreement and must keep confidential all Confidential Information of each disclosing party except as provided in this clause.
4. Either party may disclose Confidential Information of the other party to those of its employees and agents who have a need to know the Confidential Information for the purposes of this Agreement but only if the employee or agent executes a confidentiality undertaking in a form approved by the other party.
5. The parties' obligations to keep any information confidential will survive the termination of this Agreement.

#### **18. Conditions beyond the control of either party**

1. Conditions beyond the control of either party means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, transportation embargo, failure or delay in transportation, including without limitation where the Company ceases to be entitled to access the Internet or ceases to have access to the Internet for whatever reason, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.
2. If a party is wholly or partially precluded from complying with its obligations under this Agreement by a condition (or conditions) beyond the control of either party, then that party's obligation to perform in accordance with this Agreement will be suspended for such time until the condition precluding performance ceases.
3. As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under this Agreement.

#### **19. General**

1. The Company's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of the Company's right to subsequently enforce such a provision or any other provision of the Contract.
2. This Agreement (together with the documents referred to therein) constitutes the entire agreement between the parties and supersedes all prior oral or written agreements, understandings or arrangements between them relating to its subject matter.
3. Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of employer and employee or principal or franchise and agent between the parties.
4. The Client shall not be entitled to assign these Conditions nor all or any of its rights and obligations hereunder without the prior written consent of the Company.

5. If any provision of this Agreement 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 this Agreement which shall remain in full force and effect.
6. The Company may modify any of the conditions and provisions of this Agreement at any time in its sole discretion by notifying the Client thereof. If any modification is unacceptable to the Client, its only recourse is to terminate the Agreement. The Client's continued performance of its obligations under this Agreement following the Company's notice to the Client of a modification to the Agreement will constitute its agreement with and acceptance of such modification.
7. In the event of ambiguity or conflict between the provisions of this Agreement, the Outline Conduct Policy and the Schedules the provisions of this Agreement shall prevail.
8. This Agreement and the documents referred to in it are made for the benefit of the parties to them and their successors and permitted assigns, and are not intended to benefit, or be enforceable by, anyone else.
9. The rights and obligations of the parties shall continue for the benefit of and shall be binding on their respective successors and assigns.
10. If this agreement is translated into any language other than English, the English language text shall prevail.
11. This Agreement Contract will be governed by the laws of England and the parties submit to the jurisdiction of the English Courts.