



TERMS OF SERVICE

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Version

3.0

By paying invoices from Podium Apps Limited, you agree to these terms of service. If you would like to raise any concerns please email accounts@podiumapps.com.

1. INTRODUCTION

In short, you're hiring us to provide consulting, strategic, development or support services for your website, desktop or mobile application. We will strive to make your (as the "Client") project as successful as we can but now that we are getting serious we need to set out the ground rules.

We will always do our best to fulfill your needs and meet the goals we set out, but it's best to have a few things written down so that we both know what is required, who should do what, and what happens if something goes off track.

We will ensure that if we feel something is heading off track we'll bring it up with you as early as possible and we expect you to do the same. We want what's best for the enjoyment of both parties, now and in the future.

1.1. Definitions

In this contract you won't find complicated legal terms or long passages of unreadable text. We have no desire to trick you into signing something that you might later regret, but we do have several terms that we will use throughout this document to make things easier to explain.

- **You, Client, Customer.** Refers to yourself, the individual who has contracted us to provide services. In the event you're acting on behalf of a company, government organisation, partnership or sole trader these terms also extend to the company you're representing.
- **We, Us, Our.** Refers to "Podium Apps Limited, New Zealand", or "Podium Apps Limited, Northern Ireland", its directors, staff and associated contractors that may be under employ for the duration of your project.
- **Deliverables.** Refers to what we are providing you as laid out in the project Statement of Work. Your project deliverables may include wireframes, prototypes, strategic documents, concepts, design files, software development or the provision of services such as web hosting or email

consulting. These deliverables may be broken down into stages or delivered at once.

- **Statement of Work.** This documentation defines how your project will be run including a Payment Schedule and timeline.

2. WHAT DO BOTH PARTIES AGREE TO DO?

As our customer, you have the power and ability to enter into this contract on behalf of your company or organisation and its related parties. If you are providing services for another organisation this covers them as well.

By entering into this agreement you agree to:

1. Provide us with everything that we'll need to complete the project including access, passwords, databases, text, images and other information as and when we need it and in the format we ask for.
2. Review our work, provide feedback and approval in a timely manner too. Deadlines work both ways and you'll also be bound by any dates that we set together.
3. Agree to stick to the payment schedule laid out in the Statement of Work. Delays or other issues receiving payment will result in us holding back work till everything's resolved.

We have the experience and ability to perform the services you need from us and we will carry them out in a professional and timely manner. Along the way we will endeavor to meet all the deadlines set but we can't be responsible for a missed launch date or a deadline if you have been late in supplying materials or have not approved or signed off our work on-time at any stage.

We will maintain the confidentiality of any information that you make available to us throughout the duration of the project.

3. DELIVERABLE COMPONENTS

3.1. Conceptual Design

If we are contracted for providing design services, we'll create designs for the look and feel, layout and user experience of your website, mobile or software application. If you're not happy with the designs after the concept stages (including revisions) you will pay us in full for all of the work that we have produced until that point and then you may either cancel this contract or continue to commission us to make further design revisions at our hourly rate.

3.2. HyperText Markup, Cascading Stylesheets, Javascript & Browser Support

If the project includes HyperText Markup (HTML) or Cascading Stylesheets (CSS) deliverables, we'll develop these using the HTML5 specification and CSS2/3 for styling. We always strive to ensure templates are accessible, cross platform and built using valid markup where possible.

If your project has special requirements such as e-Govt regulations or 508 accessibility requirements, it is *your* responsibility to notify us of this before the project proposal so we can allow additional resource to ensure your site meets the standard set out in these guidelines. If at any point later in the project you require additional testing to meet specific standards we will add this cost to your invoice.

We test all our HTML5 markup, CSS and Javascript in current versions of all major desktop browsers to ensure that we make the most from them. The current testing matrix includes:

- Microsoft Internet Explorer (IE) 9+ (At time of writing, 11)
- Mozilla Firefox (latest)
- Google Chrome (latest)
- Apple Safari (latest)

Users of older or less capable browsers or devices will experience a design that is appropriate to the capabilities of their software. We will not test old or abandoned browsers, for example Microsoft Internet Explorer 5 or 5.5 for Windows or Mac, previous versions of Apple's Safari, Mozilla Firefox or Opera unless otherwise specified since often this can dramatically increase your project cost.

If you need us to consider these older browsers, we will charge you at the hourly rate for the additional design work, development and testing required to support such browsers.

Mobile Browsers

All our work will be tested on a range of mobile devices unless previously stated. We don't have access to every single device in the world but at our base line we'll test our work in the following operating systems:

- iOS9 and later
- Android 6 (Onwards)

This includes a mix of phones and tablets. If you have additional requirements for support please notify us. Additional testing will be charged at an appropriate rate.

3.3. Text content

We're not responsible for writing any text copy unless we specified it in the original estimate. We'll be happy to help though, and in addition to the estimate we will charge you at the specified hourly rate for copy writing or content input.

Don't stress about inputting the content, we'll happily provide training in the Content Management System we select. We can also forward you onto copywriters and business writers to help you prepare your documents for the web.

3.4. Visual & Typographical Assets

You will supply us photographs, imagery, icons and fonts which are to be included for your project in either online format or via USB drives. If you cannot provide these assets and instead choose to buy such assets we can suggest vendors and suitable options. Time we spend searching for appropriate material will be included in your project design budget up to a reasonable time but any direct cost of purchasing material will be passed onto you.

3.5. Changes & revisions

For custom development, we know from plenty of experience that fixed-price contracts are rarely beneficial to you, as they often limit you to your first idea about

how something should look, or how it might work. We don't want to limit either your options or your opportunities to change your mind.

The prices in your contract are based on the number of hours that we estimate it'll take to accomplish everything that you have told us you want to achieve. If you want to change your mind, add extra designs or even add new functionality, that won't be a problem. You will be charged the hourly rate for the estimation of how long that feature will take. Along the way we might ask you to put requests in writing so we can keep track of changes.

If you wish to reduce the scope of the project or change your mind, that's fine but we will invoice you for any work we've started that may no longer be required due to the changes. If you're having second thoughts during any part of the project get in touch as soon as possible and we can discuss the situation.

For projects with clearly defined goals and functionality requirements, we may be able to give you a fixed price fee.

Failure to get in touch early can lead to expensive mistakes and extra delays in the project.

3.6. Website Hosting

You may already have professional web hosting, you might even manage that hosting in-house; if that's the case, great. If you don't manage your own web site hosting, we can set up an account for you at one of our preferred, third-party hosting providers or on one of our managed servers.

We will charge you a yearly fee as set out by your contract for the management of that server, plus any support issues that arise throughout the year.

If you choose to host the website on your own web server, you're responsible for setting up the website, running the website and any on-going maintenance of the server, including applying security releases and software updates.

If you need a hand setting up the server we would be happy to provide a helpful system administrator to setup any software you need to run and perform configuration changes at an hourly cost.

If you choose to host with us we will do our utmost to ensure our servers are online as much as possible. Downtime (however unfortunate) is part of managing a server and because it cannot be avoided, we will not be liable for any lost profits or damages occurred, either during downtime or periods where users are unable to reach your site.

We perform security updates and house keeping tasks on our servers from time to time which may result in disabling access to your web server. The window for this work is usually 8pm - 2am NZDT.

One of the growing pains of running a website is increasing your hosting capabilities as your site gets more popular. If we notice your site is using more resources than expected, we may move your website to a higher performance server or allocate more resources. This may involve additional ongoing costs and migration costs. We will notify you of any changes that need to occur.

It goes without saying but if you do run anything illegally off the hosting we provide will remove the offending content without any warning and your site will be handed to the relevant authorities. We may also take action to recover our costs from you.

We store backups and your information will be either stored in the US or the UK. Any information can be seized under accordance with US Law. We accept no legal responsibility for content stored or uploaded to our servers.

3.7. Domain Names

If you require a domain name for your application we can purchase this on your behalf and invoice you the cost alongside your hosting contract. All domain name registrations taken under our name (Podium Apps Ltd) on your behalf are owned by us and by paying your invoice we will be providing the right to access the domain.

If we purchase a domain name on your behalf which you no longer require, we will charge you for any outstanding costs that we incur deregistering the domain name.

Our domain name purchases are non refundable as soon as they are ordered.

If you wish to cancel a domain, notice must be given 60 days before the domain is due to expire.

4.0 PROJECT WARRANTY

We're a talented group of people but even we cannot ensure our software is perfectly correct after it is completed. After your project is complete ('live') and the final invoice for the project is sent (unless your project has been required 100% payment upfront), the project enters a warranty phase for the next 35 days (5 weeks). During this time we will happily make minor changes and bug-fixes to ensure the software works as designed. Requests which include adding new or changing existing functionality in a non trivial way will be charged at the hourly rate and sent out with your next invoice.

5.0 ONGOING SUPPORT AND RETAINERS

No website or mobile application is ever finished. Ongoing changes and adding new features is a big part of running a software project. If you wish to make changes to your application which require our expertise we will charge you an hourly rate for however many hours it takes to complete the work and any related communication. You may ask for an approximate duration of this work. During business days we will strive to answer your support queries within 3 days however due to the irregularities of support enquiries we may not be able to schedule your work in for up to 3 weeks.

For mobile applications, where we can provide existing code and integrate quickly into your application, we may decide not to charge you.

To keep things fair for us we reserve the right to hold off any ongoing support if you have unpaid invoices, and reserve the right to suspend or terminate your service at any time should you have any unpaid invoices, or if we have concerns about your actions using our platform(s), or the manner in which you conduct yourself in communicating with any member of our team.

6.0 LEGAL

We can't guarantee that the code, data or implementation of your completed application or website will always be error-free and so are not liable to you or any third party for damages, including lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to provide the services in this document, even if you have advised us of the possibilities of such damages.

If any provision of this agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions.

We reserve the right to use any and all data acquired through the use of our platform(s), Podium Apps, Podium Orders, Podium Ignite & Podium Guest. We may use this data to make decisions on feature development, help locate issues platform users may be having, and to generate new business.

7.0 COPYRIGHT

You guarantee to us that any elements of text, graphics, photos, designs, fonts, trademarks, or other artwork that you provide us for inclusion in the website are either owned by yourself or organisation, or that you have permission to use them.

When we receive payment for the post completion invoice, copyright is automatically assigned as follows:

- You own the graphics and other visual elements that we create for you for this project. We can give you a copy of all files and you should store them safely as we are not required to retain copies of them or provide any native source files. If in any event a file no longer exists which is required, you are liable for any costs in re-creating or retrieving the document.
- You own the text content, video, photographs and other data you provided, unless someone else owns them.

- We own the HTML, CSS, JavaScript, PHP, Ruby, Python, Objective C, React, and any other deliverables that we create. We license the use of this code to you for use on this project. We may reuse code we develop in multiple projects however we will never release or make public any software which may harm your competitive advantage.
- We reserve the right to serve competing businesses in your industry.
- In the event that we make use of software, imagery, fonts or other material from a third party provider the individual providers retain the copyright of their respective assets.
- We love to show off our work and share what we have learned with other people, so we reserve the right to display and link to your completed project as part of our portfolio and to write about the project on websites, in magazine articles and in books.
- We reserve the right to sell or make use of any assets contained in this project.

8.0 PAYMENTS & ACCOUNTS

8.1. Payment of Debt

We're sure you understand how important it is as a small business that you pay the invoices that we send you promptly. As we're also sure you'll want to stay friends, you agree to stick tightly to following the payment schedule listed in your contract. If you're going to miss any deadlines or are having trouble paying your account please let us know so we can decide on the best course of action.

All monthly invoices come with a 7 day payment term, except development invoices which are due immediately. Work will not begin or be scheduled until the invoice is paid in full.

We invoice monthly subscriptions on the 24th of each month, and payment is due on the 1st of the following month.

For mobile applications, once the agreement has been signed the setup fee & first months hosting is immediately due, and is nonrefundable.

All customers must create a direct debit agreement with our GoCardless account.

Failure to pay your account will revoke your ownership of domains, graphics and any works we have created up to that point for your project including but not limited to wireframes, design documentation, logos, concept designs and software. We also reserve the right to remove your site or app from public viewership and remove your site or app from our servers. You will be liable for the costs of restoring the site.

8.2. Deposits

To help ensure that everyone is serious about the project we regularly require a percentage of up to the total project cost as a deposit. Deposits are non refundable to the extent of the law and are due before project kick-off. This down payment on your project is a sign of trust in our relationship and proves to us you take your project (and us) seriously. Failure to pay the deposit on time will void the timeline set out and will delay the project.

8.3. Disbursements and Costs

On our estimates we usually allow for multiple meetings, communication time as well as costs involved in being present for those meetings when needed. This will be stated on the statement of work. Any additional meetings will be charged at the appropriate hourly rate.

Any other costs involved in your project such as Licenses or buying rights will be on-charged at cost plus 5% as part of the project invoice.

9.0 CONTRACT LENGTH

Unless otherwise specified on your agreement, the minimum contract length for any website or mobile application is 24 months. After the minimum contract length has expired, your contract moves to a 30 day notice period. Any invoices outstanding at time of cancellation must be paid.

10.0 SLA Agreements

The below table outlines the Services included as part of your Retainer agreement and which services are not covered under this agreement. The selected Service Levels for your project are highlighted.

Server Hosting		Yes	No	Managed
Domain Hosting		Yes	No	Existing
DNS Hosting		Yes	No	Existing
Email Hosting		Yes	No	Only Sending
Database Hosting		Yes	No	
Website Support		Yes	No	
Mobile Application Support		Yes	No	
API Support		Yes	No	
24/7 Remote Monitoring		Yes	No	
24/7 Support		Yes	No	
Expected Resolution Time (p1, p2, p3)	1 day / 7 days / 30 days			

Response Coverage			8 / 5	
Off-Site Backups		Yes	No	
Security Updates		Yes	No	

11.0 EXPECTED RESOLUTION TIME

Requests for support are handled based on priority grade assigned 1 to 3. 1 being the highest priority. This Agreement provides an Expected Resolution Time in business hours or business days for each priority grade.

Note: Business Days exclude New Zealand and Wellington Public Holidays

- Priority 1 includes a complete or near total system outage or failure impacting a high percentage of the customers product.

- Priority 2 includes issues which affect a significant amount of the product at any one time or issues which may negatively affect the customers product. For example, preventative maintenance.

- Priority 3 includes feature enhancements and any requests for additional customisation of the product.

Our highest support level indicates P1 issues will be investigated within 1 day during the coverage time. P2 issues handled within 7 day and all other issues (P3) within a 30 day maximum. If a P3 time is left blank, any P3 issue raised will be scheduled as and when possible. We do not guarantee that we will add every feature you request, however our intention is to make our products as useful to your business as possible, and encourage your input.

12.0 FINE PRINT

You cannot transfer this contract to anyone else without our permission. This contract stays in place and need not be renewed. This contract comes into force once it has been signed. If for some reason one part of this contract becomes invalid or unenforceable, the remaining parts of it remain in place. In the event of you changing position or moving on from the company which you are representing, all outstanding work and invoices can be transferred to another party within the company as long as we are notified.

Kieran Donnelly, Director

Podium Apps Limited (NZ & UK)

Ross Porter, Director

Podium Apps Limited (NZ & UK)