



Introduction

These terms and conditions are applicable to all development projects (“Custom Development Projects”) that are undertaken by Business Apps Development Limited, the custom app development subsidiary of Applnstitute Limited (company number 07881464) trading as BusinessApps (“BusinessApps”) on behalf of the under-signed customer (“the Customer”).

If the Custom Development Project is to be hosted and supported by BusinessApps, the Customer is also bound by the separate Custom Maintenance, Hosting and Support Agreement.

1. Acceptance.

- 1.1. *A copy of these Custom Development Terms and Conditions is submitted to the Customer along with the Project Proposal (as defined below) and must be agreed by the Customer prior to work commencing. In the absence of a signed copy of these Custom Development Terms & Conditions, payment by the Customer of any deposit or payment online shall constitute acceptance of the Custom Terms & Conditions.*
- 1.2. *A copy of these Custom Terms & Conditions can be found at BusinessApps.co.uk/legals and the latest online version shall always supersede any previously published or distributed copies, unless specifically stated in the Project Proposal.*

2. Charges.

- 2.1. *Charges for services to be provided by BusinessApps are defined in the project proposal that the Customer receives via email (“Project Proposal”). A Project Proposal is valid for a period of 30 days unless otherwise agreed between the Customer and BusinessApps prior to the Project Proposal being issued. BusinessApps reserves the right to alter or decline to provide a Project Proposal after expiry of the agreed timescale.*
- 2.2. *All Custom Development Projects require an advance payment of the fee quoted within the Project Proposal (“Project Fee”) prior to work commencing. In the absence of any other agreement, for Project Fees up to (and including) £6,000 (excluding VAT), such advanced payment shall be an amount equal to 50% of the Project Fee. Where the Project Fee exceeds £6,000 (excluding VAT) such advanced payment shall be an amount equal to 20% of the Project Fee.*
- 2.3. *The remaining balance of the Project Fee total shall fall due be due upon completion of agreed milestones, as detailed in the Project Proposal.*
- 2.4. *The Project Fee shall include the release of source-code, Photoshop files (where used) and submission of the resulting App to any App store but, for the avoidance of doubt, the Project Fee does not include any hosting fees.*
- 2.5. *The Project Fee may be paid by credit/debit card, online payment, cheque or bank transfer. Cheques should be made payable to Business Apps Development*

3. Customer Review.

- 3.1. *BusinessApps will provide the Customer with an opportunity to review the appearance, content and functionality of the Custom Project deliverables at the completion of each milestone and once the Custom*



Project is completed. Upon each opportunity given the Customer to provide feedback to BusinessApps, the content, appearance and functionality will be deemed to be accepted and approved by the Customer unless the Customer notifies BusinessApps otherwise within 21 days of the date the materials are made available to the Customer for review.

- 3.2. In circumstances where the Custom Project deliverables are deemed to be accepted by the Customer in accordance with clause 3.1, the Customer's account shall be in default and the Customer shall be bound to pay the balance of the Project Fee or current milestone payment. On receipt of payment, the Customer will be provided with the Custom Project at whatever stage of completion it was at on the expiry of the 21 day period referred to in clause 3.1.*
- 3.3. In the event the Customer provides feedback on the Custom Project deliverables after the expiration of the 21 day period referred to in clause 3.1, BusinessApps shall have the right to treat the Customer's feedback as an entirely new instruction, in respect of which it shall be entitled to revise or re-issue its Project Proposal and Project Fee accordingly.*

4. Project Schedule and Content Control.

- 4.1. BusinessApps shall endeavour to supply the Customer's App by the date specified in the Project Proposal. If no such date is specified, the time-scale shall be within twelve weeks of the date on which BusinessApps received the advance payment referred to in clause 2.2, unless a delay is specifically requested by the Customer and agreed by BusinessApps. An alternate time-scale can be agreed during the initial project discussion*
- 4.2. In order to facilitate the timely completion of the Project, the Customer hereby agrees to delegate a single individual as 'first-point-of-call' to aid BusinessApps with completing the Project in a satisfactory and expedient manner.*
- 4.3. During the Project, BusinessApps will require the Customer to provide feedback, copy and images. If this is not provided within two weeks of an official request by email then BusinessApps reserves the right to advise the Customer of a revision to the Project Fee subject to any costs incurred in the project delay. If this is not provided within four weeks from the original email request then the Customer is considered to be in default of the Project, and BusinessApps shall have the right to terminate the Project and raise an invoice in respect of the balance of the Project Fee. BusinessApps may agree, entirely at its own discretion, to recommence any Project previously treated as terminated, subject to both the Customer agreeing a new Project Proposal and payment in full of the Project Fee as specified in the original Project Proposal.*

5. Payment.

- 5.1. An invoice will be issued at the start of the Project to cover the advance payment referred to in clause 2.2. Further invoices will be provided by BusinessApps upon completion of each milestone of the Customer Project (or at completion of the Customer Project where no milestones have been agreed).*
- 5.2. Invoices shall be sent by BusinessApps to the Customer via email.*
- 5.3. All invoices are payable on receipt. The Custom Project will not be submitted to any App stores nor will any source code be released to the Customer prior to settlement of the final invoice and otherwise the entire Project Fee having be paid in full.*



5.4. *If any invoice remains outstanding for more than 30 after the invoice date BusinessApps will consider the Customer's account to be in default.*

6. *Default.*

6.1. *In the event of the Customer's default, any information or files on BusinessApps' host space, may be removed by BusinessApps at its sole discretion. BusinessApps shall not be responsible for any loss of data incurred as a result of the removal of the service, nor shall it have any liability in respect of such removal.*

6.2. *Removal of the Customer's material from BusinessApps host space does not relieve the Customer of the obligation to pay any outstanding charges assessed to the Customer's account.*

6.3. *Cheques returned for insufficient funds, or electronic payments returned unpaid will incur a return charge of £25 each and the Customer's account will immediately be considered to be in default until full payment is received by BusinessApps in cleared funds.*

6.4. *Customers with accounts in default agree to pay BusinessApps's reasonable expenses, including legal fees and costs for collection by third-party agencies, incurred by BusinessApps in enforcing these Custom Terms and Conditions.*

7. *Termination.*

7.1. *In the event that the Customer (directly or indirectly) makes or attempts to make contact with an employee or contractor of BusinessApps with the purpose or intention of instructing such persons to undertake any work relating to the Custom Project outside of the agreed arrangements between the Customer and BusinessApps, BusinessApps shall be entitled to terminate this agreement without notice, raise an invoice in respect of all work undertaken in relation to the Custom Project and, subject to payment of such invoice in full, deliver the Custom Project to the Customer in whatever stage of development it had reached at the time such conduct of the Customer became known to BusinessApps.*

7.2. *BusinessApps shall be entitled to terminate this Agreement without notice and with immediate effect if the Customer's account is in default under clause 3.2 or 5.4, without prejudice to BusinessApps's other rights arising in the event of default pursuant to clause 6.*

7.3. *Termination of the Custom Project by the Customer must be requested in writing or email and will be effective on receipt of such notice by BusinessApps. Telephone requests for termination of services will not be honoured until and unless confirmed in writing or email.*

7.4. *The Customer will be invoiced for design and development work completed on the Custom Project up to and including the date on which BusinessApps receives written notice of cancellation from the Customer pursuant to clause 7.3, such invoice to be payable within 14 days.*

7.5. *Any advance payment made pursuant to clause 2.2 is entirely non-refundable and in the event of termination or cancellation for any reason whatsoever shall be forfeited, even where no deliverable work has been completed by BusinessApps.*

8. *Other Terms and Warranty*

8.1. *These Custom Terms and Conditions incorporate all terms and conditions contained within:*

8.1.1. the BusinessApps Non-Disclosure Agreement; and



8.1.2. where the Custom Project is to be hosted and supported by BusinessApps, the Custom Services Terms and Conditions copies of which can be found at [BusinessApps.co.uk/legals](https://www.businessapps.co.uk/legals).

8.2. In delivering the finalised Customer Project, BusinessApps grants a 30 day warranty period commencing on the date the App goes live, in respect of bug fixes validated by BusinessApps only. For the avoidance of doubt this warranty is only given where the Custom Project is completed in full and not in circumstance where this Agreement is terminated early for any reason.

9. Intellectual Property Rights

9.1. The Customer retains all intellectual property rights to all copy, data, files and graphic logos provided by the Customer, and grants BusinessApps the rights to publish and use such materials for the purposes of creating and, where relevant, hosting and supporting the Custom Project in addition to using such materials for the purposes of BusinessApps's promotional and marketing activities (except where such use is expressly prohibited by the Customer).

9.2. In the event that any third party intellectual property rights used by the Customer are provided to BusinessApps for the purposes of completing the Project, the Customer shall ensure that all such rights are used by the Customer with the appropriate consents, permissions and/or licences and that use of such materials by BusinessApps shall not constitute an infringement of such third party rights. The Customer agrees to indemnify and hold harmless BusinessApps from any and all claims resulting from the Customer's negligence or inability to obtain proper and sufficient consents, permissions or licences in respect of such third party rights.

9.3. By engaging BusinessApps in respect of the Custom Project, the Customer guarantees to BusinessApps that all necessary third party consents, permissions and/or licences have been obtained in respect of third party intellectual property rights. BusinessApps may request evidence of such consents, permissions and/or licences. Failure by the Customer to produce such evidence shall entitle BusinessApps to terminate the Project following which the Customer shall be issued with an invoice in respect of work undertaken to date, such invoice to be payable upon receipt. Alternatively, BusinessApps may place a Project on hold pending production of such evidence. Any costs or expenses arising as a result of such delay shall be borne by the Customer in addition to the Project Fee.

9.4. All intellectual property rights arising out of the development and creation of the Custom Project (including source code) shall belong to the Customer.

10. Media Delivery Requirements.

10.1. Unless otherwise specified in the Project Proposal, this Agreement assumes that any text will be provided by the Customer in electronic format (ASCII text files delivered via e-mail, CD-ROM, DVD, or FTP) and that all photographs and other graphics will be provided physically in high quality print suitable for scanning or electronically in .gif, .jpg or .png format.

10.2. Specific requirements relating to media delivery will be discussed and agreed with the Customer prior to commencement of the Project and all special arrangements shall be detailed within the Project Proposal.

10.3. Although every reasonable attempt shall be made by BusinessApps to return to the Customer any images or printed material provided for use in creation of the Customer's App, such return cannot be guaranteed and BusinessApps accepts no liability in respect of lost materials.

11. Access Requirements.

- 11.1. *If the App is to be published on a third-party development account, BusinessApps must first be granted temporary access to the account in order to prepare App submission. If the App is to interact with a third-party remote server, the Customer shall provide full access details to storage and content directories to BusinessApps.*
- 11.2. *Depending on the specific nature of the Custom Project, other resources might also need to be configured on the server to ensure the correct operation and functionality of the App. The Customer agrees to grant all necessary access to BusinessApps for the purposes of facilitating this.*

12. Post Project Alterations.

- 12.1. *BusinessApps cannot accept responsibility for, and shall have no liability in respect of, any alterations to the App caused or instigated by the Customer or a third party following completion of the Project. Such alterations include, but are not limited to additions, modifications or deletions.*
- 12.2. *In the event that a Customer wishes to instruct BusinessApps to undertake work required to resolve any issues or problems arising from such modification, BusinessApps shall be entitled to charge a one-off fee in respect of such remedial work, to be agreed by the Customer prior to any such work commencing.*

13. Third Party Services.

- 13.1. *BusinessApps may require the usage of third party services - for example, Google Maps API - to complete the Customer's Project requirements and will ensure these services are integrated into the Project and that they function correctly upon completion.*
- 13.2. *BusinessApps cannot be held responsible for subsequent changes or issues with any such third party services that may result in issues on the App. In the event that the Customer requires BusinessApps to undertake remedial work in respect of subsequent changes to third party services, it shall be entitled to charge a one off fee, to be agreed by the Customer prior to the commencement of such remedial work.*

14. Domain Names

- 14.1. *BusinessApps may purchase domain names on behalf of the Customer, in which case they will then be renewed on an annual basis and the Customer will be invoiced by BusinessApps.*
- 14.2. *BusinessApps will issue a reminder email to the Customer at 60 days and 30 days prior to expiration of each domain. Domains are automatically renewed ten days before expiration.*
- 14.3. *In the event that the Customer does not wish to keep a domain, it must notify BusinessApps of that fact no less than twenty days before the expiration date.*
- 14.4. *BusinessApps accepts no liability in relation to:*
 - 14.4.1. *the loss, cancellation or otherwise of any domain caused by either the Customer being in default in respect of payment of any invoice; or*
 - 14.4.2. *in relation to any costs being incurred in keeping the domain where the Customer has failed to notify BusinessApps pursuant to clause 14.3.*



14.5. *It is the sole responsibility of the Customer to keep records of the due dates for payment to ensure that payment is received in good time.*

15. General.

These Development Terms and Conditions supersede all previous representations, understandings or agreements. The Customer's signature below or payment of an advance fee constitutes agreement to and acceptance of these Development Terms and Conditions. Payment online is an acceptance of all applicable BusinessApps terms and conditions.

16. Governing Law.

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

