

# Terms and conditions for the Futureproofs service

Version: 2017-12-06

## 1. Parties

“Parties” shall mean We Are Futureproofs Limited, whose registered office is Bank Gallery, High Street, Kenilworth, CV8 1LY, UK and with company registration number 08606630 (the Company), and any person using the service (the User).

## 2. Definitions and interpretation

“Confidential Information” means the trade secrets, confidential or sensitive information or knowledge and know-how including the confidential financial, trade, customer, product, transaction, system and processing information and data of the relevant Party.

“Customer” means both Users and Publishers.

“Event of Force Majeure” means Acts of God, explosions, war or threat of war, terrorism or threat of terrorism, actions of the armed forces or government agencies pursuant to war, terrorism or threats thereof, fire, flood, adverse weather conditions, labour disputes, strikes, lockouts or other industrial actions irrespective of where such events occur, shortage of materials or services, detention or holding of goods by any customs authorities or any national or international airworthiness authority, riots or civil commotion, sabotage, earthquakes and natural disasters, acts, omissions, restrictions, regulations, prohibitions or measures of any governmental, parliamentary or local authority.

“Fees” means the amounts payable by the Customer to the Company as set out in Clause 5.

“Intellectual Property Rights” means patents, trademarks, service marks, rights in logos, rights in get-up, trade names, internet domain names, rights in designs, software, copyright (including rights in computer software) and moral rights, database rights, utility models, processes, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and registered includes registrations and applications for registration.

“Publisher” means any person, partnership, corporation or other organisation that uploads content to the Service.

“Purpose” means to upload and share content to enable the review, correction and project management of that content.

“Service” means the functions performed from time to time by the Company’s Futureproofs product.

## 3. Becoming a User and accessing the Service

- 3.1. You become a User who is entitled to access the Service by registering an account. The registration of an account confirms acceptance of these Terms and Conditions.

- 3.2. Each User must create a secure password. The User has full responsibility for keeping their chosen password secret and secure.
- 3.3. A User may create a Publisher Account within the Service in order to create projects. Creating a Publisher Account makes the User who created it the Administrator of that Publisher account. An Administrator may invite other users to become additional Administrators of that Publisher Account by giving them appropriate access within the Service.
- 3.4. Administrator(s) have full responsibility for ensuring that anyone accessing their uploaded content will observe these Terms and Conditions, and will indemnify the Company in respect of any loss that arises as a result of permitting such access.
- 3.5. The Company may provide the Customer with documentation, training and email, live-chat and phone support to assist them in their use of the Service, depending on the payment plan adopted by the Customer.
- 3.6. If the Customer requires additional support such as on-site visits the Company shall be entitled to make an additional charge for this Service. The amount of the charge will be agreed with the Customer before any such additional support is delivered.

## 4. Service availability

- 4.1. On occasions, down time of the Service will be necessary for essential maintenance or upgrade purposes. The Company will endeavour to provide 24 hours' notice of the down time and to ensure that the down time is when the Service is least utilised by Customers.
- 4.2. The Company shall not be responsible to the Customer for any delay or failure in carrying out obligations under these Terms and Conditions if the delay or failure is caused by an Event of Force Majeure. The Company shall notify the Customer of any such circumstances as soon as possible.
- 4.3. Overall service availability for the Customer may be subject to limits on file sizes, total storage space or number of API calls. In the event of a limit applying the Customer will be informed in advance of the limit by the Company.

## 5. Fees and payments

- 5.1. The Customer will pay the associated fees for use of the Futureproofs platform under any and all Publisher Accounts for which their Users are Administrators.
- 5.2. Available payment plans will be listed on the Company's website or otherwise communicated to the Customer. Pricing is subject to review. If the Company changes the offered payment plans, existing Customers will be notified within 7 days. Such changes will be immediately binding on new Customers, but existing Customers will have 60 days from the date of notification to choose a new plan or to terminate their use of the Service. At the end of those 60 days, if a Customer has expressed no preference for a new plan, the Company may at its discretion move that Customer to the closest equivalent plan (in the Company's opinion).
- 5.3. The Customer may end their subscription by providing notice by email to [accounts@futureproofs.net](mailto:accounts@futureproofs.net), [support@futureproofs.net](mailto:support@futureproofs.net) or [finance@futureproofs.net](mailto:finance@futureproofs.net).
- 5.4. The Customer will continue to be liable for the Fees in accordance with the advertised pricing of the Company for 30 days following such notification. For avoidance of doubt, if an invoice

would normally be issued within the 30-day notice period, that invoice will be sent as normal and must be paid.

- 5.5. The Customer's subscription will end at the close of the period covered by their final invoice.
- 5.6. If a Customer ends a subscription and then takes out a new subscription within 3 months, they will be treated as having a continuous subscription for the whole period, and outstanding fees will be charged for the intervening period between the end of the old subscription and the start of the new subscription. Such fees will be the higher of the two subscription rates, if there is a difference.
- 5.7. The Company will issue invoices (including VAT where appropriate) when a Customer is liable for fees. All payments must be received within 30 days of an invoice being issued.
- 5.8. Charges shall be issued in pounds sterling and shall be payable in pounds sterling within 30 days. The Company may, at its sole discretion, allow payments to be made in different currencies and may charge additional administration fees for such payments.
- 5.9. The Company may accept payment from Customers via a range of channels, and may at its discretion include additional administration fees for certain channels.
- 5.10. Publishers must provide complete, accurate and up-to-date payment information for their account.
- 5.11. Interest on late payments shall be charged at 3% above the Bank of England's base rate at the time.
- 5.12. Invoices remain payable in the event of a query on the invoice. Any queries on an invoice rendered must be made within 30 days of receipt. The Company will investigate any such query and respond within 14 days. If a Customer's query is upheld, an appropriate adjustment will be made to a subsequent invoice.
- 5.13. The Company reserves the right to suspend or limit access to the Service if the Customer fails to make payment within the requirements of these Terms and Conditions. In particular, a Customer may have their ability to upload proofs suspended until payment is made.

## 6. Representations and warranties

- 6.1. Each Party represents and warrants to the other that it has the right and authority to agree to these Terms and Conditions and to perform all of its respective obligations and undertakings.
- 6.2. The Customer warrants that no documents uploaded will violate or infringe any Intellectual Property Rights, rights of privacy or rights of proprietary of any third party.
- 6.3. It is the Customer's responsibility to ensure that the Service is suitable for their intended purposes. The Company provides no warranties as to the function or use of the Service, whether express, implied or statutory, including, without limitation, any implied warranties of merchantability or fitness for particular purpose.
- 6.4. If the Customer becomes aware that their account may have been compromised, they are responsible for letting the Company know as soon as they become aware of such a possible event and the Customer must take steps to re-secure the account by changing passwords.

## 7. Restrictions

- 7.1. Except as otherwise expressly provided herein, the Customer may not:
- a. copy, rent, lease, sell, transfer, assign, sublicense, disassemble, reverse engineer or decompile, modify or alter any part of the Service;
  - b. share or permit to be shared with any third party their User account or its login details;
  - c. use or permit to be used the Service for anything other than the Purpose;
  - d. knowingly use the Service in connection with or to promote any products, services or materials that constitute, promote or are used primarily for the purpose of dealing in spyware, adware, spam, pornography, any offensive purposes, illegal or fraudulent activity;
  - e. knowingly use the Service in any manner or for any purpose that violates any applicable law or regulation, or any right of any person including, but not limited to, child protection, libel, privacy or Intellectual Property rights;
  - f. knowingly use the Service in any manner that violates laws about unsolicited email or harassment of other Customers or persons.

## 8. Ownership

- 8.1. The Service and all Intellectual Property rights contained therein are and shall at all times remain the sole and exclusive property of the Company.
- 8.2. Content uploaded to the Service remains the Intellectual Property of its creator(s). By using the Service, Customers grant the Company any and all rights in any such content that the Company needs to deliver the Service.
- 8.3. By using the Service, the Customer agrees to allow the Company to collect data about their use of the Service and to monitor performance in accordance with Clause 11. Where the Customer has made suggestions to the Company regarding the Service that may result in the enhancement of the Service, the Customer grants the Company the irrevocable right to use and incorporate any such suggestion without the Customer having any claim to the intellectual property this may create.

## 9. Confidentiality

- 9.1. The Company will treat as confidential all Confidential Information obtained from the Customer. The Customer agrees that this clause does not prohibit disclosure of Confidential Information to:
- a. the Company's own authorised personnel (including employees, agents and permitted contractors) who need to be provided with the Confidential Information to enable delivery of the Service; or
  - b. the Company's auditors, professional advisers, any person or organisation having a statutory or regulatory right to request and receive that information, including without limitation a relevant tax authority.

This clause does not apply to information which the Company can show by reference to documentary or other evidence:

- i. was rightfully in its possession before the start of discussions between the Parties relating to the Service;
  - ii. is already public knowledge or becomes so at a future date (save for as a result of breach of this clause);
  - iii. is received from a third party who is not under an obligation of confidentiality in relation to the information; or
  - iv. is developed independently without access to, use of or knowledge of the Confidential Information.
- 9.2. The obligations of confidentiality under this Clause 9 shall survive the termination of the Parties' other obligations under these Terms and Conditions until such time as the Confidential Information enters the public domain other than through the fault of the Company or for two (2) years, whichever is the shorter.

## 10. Customer responsibilities

- 10.1. The Customer is completely responsible for the content uploaded by them to the Service. The Company does not monitor or control the content uploaded.

## 11. Retention of data

- 11.1. The Company keeps copies of all materials uploaded to the Service. However, the Customer is responsible for maintaining their own backup of these materials. The Company reserves the right to charge for the retrieval of the Customer's materials other than through the normal functioning of the Service.
- 11.2. The Customer may, following termination of this Agreement, request the Company to remove from its systems some or all of the following information and data:
- a. the account details of the Customer, including their name and contact information;
  - b. any projects within the Service for which the Customer is the sole Project Owner;
  - c. any proofs uploaded to the Service in such projects;
  - d. any markup on such proofs by any user;
  - e. emails and other communications between the Customer and the Company, whether related to the Service or otherwise.

Within 30 days of receiving such a request, the Company shall remove the requested data from its live servers. All such data may remain in the Company's backups until the backups expire but the Company shall ensure that the data is not present in any restored systems.

- 11.3. Notwithstanding Clause 11.2, the Company shall not, following termination, delete:
- a. any markup by the Customer on projects owned by another Customer;
  - b. the financial data of the Customer, including the payment details, amounts and dates of Fees and their payment.

## 12. Security and data protection

- 12.1. The Company will take appropriate technical and organisational steps to prevent unauthorised or accidental access, modification or destruction of the Customer's data. The liability of the Company shall not exceed the provisions of clause 13 of these Terms and Conditions.
- 12.2. Customers must not interfere with the normal operation of the Service, nor with any other User's work on the system. Customers must not attempt to gain unauthorised access to the Service or to related systems or networks.
- 12.3. The Company shall process personal data in accordance with the provision of the Data Protection Act 1998 and only to the extent required to deliver the Service, and shall publish a policy on how it handles such data on its website. In order to deliver the Service, the Company may transfer personal data to countries outside the EU where there is no equivalent Data Protection legislation. By using the service you consent to such transfer of personal data.
- 12.4. The Company does not sell or share any personal data with third parties save as detailed above.

## 13. Liability and indemnification

- 13.1. The Customer will indemnify the Company against all liabilities, claims, demands, expenses, actions, costs, damages or loss arising out of breach or alleged breach by the Customer in regard to the Customer's obligations under these Terms and Conditions. Such indemnity shall survive the termination of the Customer's other rights and obligations under these Terms and Conditions.
- 13.2. The Company shall not be liable to the Customer for consequential, indirect, special, punitive or exemplary damages including but not limited to damages for loss of profits, business or anticipated benefits whether arising under tort, contract, negligence or otherwise whether or not foreseen, reasonably foreseeable or advised of the possibility of such damages.
- 13.3. No responsibility is assumed by the Company for any injury and/or damage to persons or property as a matter of product liability, or from any use or operation of any methods, products, instructions or ideas contained in any item or Product supplied by the Company under these Terms and Conditions except where it is shown that any injury was caused as a result of the Company's negligence.
- 13.4. The express terms of these Terms and Conditions are in lieu of:
  - a. all warranties, conditions, undertakings, terms and obligations implied by statute, common law, trade usage, course of dealing or otherwise including but not limited to any implied warranties of merchantability or fitness for any particular purpose all of which are hereby excluded to the fullest extent permitted by law; and
  - b. any implied terms as to the performance of computers or networks when used in conjunction with the Service, materials, information, goods, technology and/or editorial content provided under these Terms and Conditions.
- 13.5. Nothing in these Terms and Conditions shall exclude or limit either Party's liability for:
  - a. death or personal injury resulting from the negligence of either Party or their servants, agents or employees;

b. fraud or fraudulent misrepresentation.

13.6. Nothing in these Terms and Conditions shall prevent the Company from claiming for amounts lawfully due under these Terms and Conditions or operate to limit any liability resulting from any infringement or breach of Intellectual Property Rights by the Customer.

13.7. Where the Company is liable to the Customer for negligence, breach of contract or any other cause of action arising out of these Terms and Conditions, such liability shall not exceed the amount equal to the total sum of the Fees (exclusive of all taxes) paid by the Customer to the Company under these Terms and Conditions in the 12 months prior to the alleged liability.

## 14. Suspension and termination

14.1. The Customer may terminate their use of the Service by providing notice by email to [accounts@futureproofs.net](mailto:accounts@futureproofs.net), [support@futureproofs.net](mailto:support@futureproofs.net) or [finance@futureproofs.net](mailto:finance@futureproofs.net).

14.2. The Customer will continue to be liable for the Fees in accordance with the advertised pricing of the Company for 30 days following such notification of termination. For avoidance of doubt, if an invoice would normally be issued within the 30-day notice period, that invoice will be sent as normal and must be paid.

14.3. The Customer's account will be terminated at the close of the period covered by their final invoice.

14.4. The Company may suspend an account temporarily if they deem there is a risk to anyone affecting the availability of the Service or the security of the data stored in the Company's system, or if they are required to do so by any regulatory or statutory requirement. If a suspension is necessary, the Company will inform the Customer by email and will endeavour to reinstate the Service as soon as possible.

14.5. The parties' rights and obligations under these Terms and Conditions will continue until in full force until terminated in accordance with any of the events listed below.

14.6. Notwithstanding any other provisions contained herein, the Customers' rights and obligations under these Terms and Conditions may be terminated immediately:

- a. by the Company if the Customer commits any breach of these Terms and Conditions and fails to remedy such breach to the Company's reasonable satisfaction within 10 days after receiving written notice from the Company requiring the Customer to do so;
- b. by the Company if the Customer shall present a petition or have a petition presented by a creditor for the Customer's winding up or the Customer enters into compulsory or voluntary liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), or the Customer shall have a receiver of all or any of the Customer's undertakings or assets appointed, or the Customer shall be deemed by virtue of the applicable law to be unable to pay its debts or carry on business;
- c. by the Customer if the Company commits any breach of these Terms and Conditions and fails to remedy such breach to the Customer's reasonable satisfaction within 30 days after receiving written notice from the Customer requiring the Company to do so.

14.7. Termination of the Customer's rights and obligations under these Terms and Conditions shall be without prejudice to any accrued rights of either Party or amounts payable in respect of the



Fees, and shall not affect obligations which are expressed not to be affected by termination hereof.

- 14.8. Termination of the Customer's rights under these Terms and Conditions by the Company under Clause 14.6 shall be without prejudice to any claim which the Company may have against the Customer for any loss or damage (including, without limitation, consequential loss or damage) suffered by the Company as a result.
- 14.9. In the event of termination of the Customer's rights under these Terms and Conditions (except under Clause 14.1), the Customer undertakes that, immediately upon the effective date of such termination, the Customer and any parties acting on their behalf shall cease use of the Product. This obligation shall survive termination.

## 15. Assignment

- 15.1. The Customer shall not be entitled to assign, transfer or novate rights and obligations under these Terms and Conditions without prior written consent from the Company, which shall not be unreasonably withheld.

## 16. Miscellaneous

- 16.1. Any amendment or variation to these Terms and Conditions shall be notified by the Company to the Customer.
- 16.2. The failure of either Party to exercise or enforce any right conferred upon it by these Terms and Conditions shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time(s) thereafter, as a waiver of another or constitute a continuing waiver.
- 16.3. Without prejudice to the rights of either Party in respect of actions relating to fraudulent misrepresentation, these Terms and Conditions and any documents referred to herein constitute the entire understanding between the Parties with respect to the subject matter thereof and supersedes all prior agreements, negotiations and discussions between the Parties relating thereto.
- 16.4. The Parties agree that monetary damages may not be a sufficient remedy for the damage which may accrue to a Party by reason of failure by any other Party to perform certain of its obligations hereunder. Any Party shall therefore be entitled to seek injunctive relief, including specific performance, to enforce such obligations.
- 16.5. The unenforceability of any single provision of these Terms and Conditions shall not affect any other provision hereof. Where such a provision is held to be unenforceable, the Parties shall use their best endeavours to negotiate and agree upon an enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the unenforceable provision.
- 16.6. A person who is not a party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Terms and Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.



- 16.7. Nothing in these Terms and Conditions shall be deemed to constitute a partnership between the Parties nor, save as expressly set out herein, constitute either Party the agent of the other Party.
- 16.8. These Terms and Conditions shall be governed by and construed in accordance with English law and each Party irrevocably submits to the exclusive jurisdiction of the English courts over any claim, dispute or matter arising under or in connection with these Terms and Conditions or its enforceability.
- 16.9. The Parties waive any rights to a jury trial in any claim, dispute or matter arising under or in connection with these Terms and Conditions or its enforceability.

## 17. Publicity

- 17.1. The Company may use the Customers name and/or logo on their website or other marketing materials for publicity purposes only unless the Customer specifically requests the Company not to do so. Use of Customer details under this clause shall not imply that the Customer endorses or recommends the Company or its Service unless the Customer has given permission to do so.