

# WeaverWorx

## Website Designers



# Service Agreement

This is the Service Agreement of the sole proprietorship, Karen Nel trading as WeaverWorx Website Designers. In this document "WeaverWorx", "we", "our", or "us" refer to WeaverWorx Website Designers.

Our address is: 18 Fish Eagle, 2 End Road, Sea Park, Port Shepstone, 4230.

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# WEAVERWORX: SERVICE AGREEMENT

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# WEAVERWORX: SERVICE AGREEMENT

## 1. Introduction

WeaverWorx Website Designers, based in South Africa, offers website design, maintenance and hosting services. The Services are delivered subject to this Agreement.

## 2. Definitions

We have given the meanings of some words to be consistent. These words usually begin with a capital letter. Singular words include the plural (and vice versa):

**“Agreement”** means these Terms of Service, as well as any other additional terms, conditions, rules or policies which are displayed to the Client in connection with the Services.

**“Client”** is a legal entity (individual, company, etc.), who enters into an Agreement with WeaverWorx.

**“Design Project”** is a design Service. It refers to the process of designing a website or graphic image (examples: logos, pamphlets, banners, etc.).

**“Fee”** means the amount payable by the Client in respect of the Service as noted in the quote/invoice/written communication provided to the Client on initiation of the Service, and subject to change from time to time.

**“Service”** means any service provided by WeaverWorx to the Client. Regardless of whether the Client pays for the services or the service is provided as part of a package or for free, any service requested or allowed to be provided by WeaverWorx is included as part of the Services.

**“Supplier”** means a supplier of goods and / or services to WeaverWorx.

**“WeaverWorx”** means WeaverWorx Website Designers or any other entity which WeaverWorx Website Designers may assign, cede or delegate any of their rights or obligations to.

**“WeaverWorx Website”** means the Internet website published at the URL [www.weaverworx.africa](http://www.weaverworx.africa) or another URL that WeaverWorx notifies the Client of from time to time.

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## 3. Acceptance of Terms

By using WeaverWorx's Services, the Client agrees, without limitation or qualification, to be bound by the terms and conditions of this Agreement.

## 4. Design Project Terms

- 4.1 It is the Client's responsibility to provide WeaverWorx with clear guidelines, project requirements, objectives or any other specific details that the Client requires to be included in the Service to be delivered. When such details are not provided, WeaverWorx will proceed with WeaverWorx's understanding of the Client's requirements and design the project accordingly. At a later stage, if a discrepancy arises, it may lead to additional Fees to accommodate the changes. Thus, it is essential that you clarify every aspect of the project requirements (features and functionalities, etc.) and ensure that you have been quoted on the right requirements.
- 4.2 Once a project specification has been finalised, any additions, changes or enhancements in the functionality or design of the project will affect the project specification and may incur additional Fees and a revised delivery date. All additional work, over and above the quote is charged separately. Under no circumstances will WeaverWorx be liable for any delays caused by a change in the project specification.
- 4.3 Project content and all related materials need to be provided to WeaverWorx within the first two weeks of starting the project. Any delays thereafter may delay the project and may incur additional Fees if it goes beyond reasonable timeframe.
- 4.4 The Client must recognise that at times there may be unforeseen circumstances that will delay the development process, particularly with reference to the integration of Supplier software. WeaverWorx will try its best to complete the project as agreed in the proposal. As long as it is within a reasonable period, the Client agrees not to penalise WeaverWorx for any genuine delay, when every effort to keep the project on the proposed schedule is taken.
- 4.5 WeaverWorx takes no responsibility for any of the Supplier products, software or components used in the website development such as payment gateway, SSL certificates etc. We suggest you make regular back-ups of your website to avoid any loss of information during disruptions.

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- 4.6 WeaverWorx offer Services in co-ordination with 3<sup>rd</sup> party Suppliers, e.g. shared hosting, domains, software, etc. Changes to the Supplier's rules and policies may ultimately affect the services we provide or the terms and conditions herein.
- 4.7 Where Clients decide to arrange their own hosting, WeaverWorx should be consulted before finalising the type of hosting and database, as it should meet the requirements of the technology used for the website design project. Please note that WeaverWorx require full access with hosting support from the chosen hosting provider for testing and designing the project. WeaverWorx will not be liable for any delays or errors caused by direct or indirect actions of the hosting company.

## 5. Charges & Fees

- 5.1 Quotations by WeaverWorx are valid for a period of 30 days after e-mail delivery thereof to the Client. A deposit of 50% of the Design Project Fee, payable to WeaverWorx's bank account within the said 30-day quotation validity period, will be required before any work commences. The remaining balance of 50% will be payable upon completion and handover of the project to the Client or publication of the website to the internet.
- 5.2 The 50% deposit is not refundable if the Client resolves to cancel the project for any reason other than unsatisfactory work. Unsatisfactory work is described as work delivered at a sub-standard quality, and not according to the website specification defined and agreed upon by WeaverWorx and the Client.
- 5.3 WeaverWorx's hosting and maintenance services are payable in advance.
- a. Annual payments must be paid in full no later than fourteen (14) working days prior to the expiry date.
  - b. Monthly payments must be paid one calendar month in advance, which means that you pay before the end of January for services to be rendered in February.
- 5.4 Any payment relating to the domain name registration renewal or any Supplier products or service purchased on behalf of the client must be paid in full in advance and is non-refundable.
- 5.5 Any additional work, author's corrections or ad hoc changes and updates will be charged at a standard hourly rate (dependent on task, to be verified at start of task), or will be quoted separately, depending on the type of changes / updates required.

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5.6 WeaverWorx reserve the right to amend or vary the Service Fees, and any amendment or variation of the Service Fees will be seen as an amendment of our Agreement. If we amend the Service Fees, WeaverWorx will give you at least 30 days prior notice. If you object to any amended service fees, you may terminate your relationship with us as stipulated under clause 21.

## **6. Liability**

6.1 WeaverWorx provides its services “as is” 1) without warranty of any kind that the Services will be uninterrupted or error-free and 2) without any guarantees on security or other issues leading to loss of data, sale or reputation. WeaverWorx ensures to the best of its ability that systems and servers are protected from hackers, viruses, intruders and other online and offline problems, however WeaverWorx will not be held liable for any disruption of services if such situation arises. In no event shall WeaverWorx be liable to the client for any direct, indirect, special, punitive, incidental, or consequential damages arising out of the use of the website, mobile app and services goods provided to the Client. This includes, without limitation, lost profits, business interruption, loss of data or other losses directly resulting from the use of the website, mobile app and services provided to the Client.

6.2 The Client will indemnify and hold WeaverWorx, its licensors, content providers, service providers, employees, agents, officers, directors, contractors and sub-contractors (the “Indemnified Parties”) harmless from their breach of any of these terms of this Agreement or any other terms, conditions, policies or procedures herein, including, without limitation, any use of content other than as expressly authorised in this Agreement. The Client agrees that the Indemnified Parties will have no liability in connection with any such breach or unauthorised use, and you agree to indemnify and hold harmless the Indemnified Parties from any and all resulting loss, damages, judgments, awards, costs, expenses, and attorneys’ fees in connection therewith. The Client will also indemnify and hold the Indemnified Parties harmless from and against any claims brought by third parties arising out of the Client’s use of information obtained from WeaverWorx.

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## 7. Unacceptable Use

WeaverWorx's Services may only be used for lawful purposes and activities. WeaverWorx prohibits any use of its Services including the transmission, storage and distribution of any material or content using WeaverWorx's servers that violates any law or regulation of the Republic of South Africa or any other country in which the website is used. This includes, but is not limited to, usage or activity that may:

- a. directly or indirectly breach any local and international law, regulation or legally binding code; infringe any person's copyrights, trademarks, privacy rights, moral rights, trade secrets, patents and any other legal rights; and/or give rise to a cause of action against any person;
- b. lead to any violation of another's right to privacy, including any effort to collect personal data of third parties without their consent;
- c. promote the use of illegal substances;
- d. result in the sale, transmission or distribution of pirated or illegal software;
- e. provide access to content that may be experienced as threatening, abusive, libellous, defamatory, racial, sexist, harassing, degrading, intimidating, hateful, invasive of privacy towards any individual or group of people;
- f. contain or promote "spam", mail fraud, pyramid schemes, investment opportunities or advice which is not permitted under law, or any other fraudulent activities.

## 8. Hosting

8.1 WeaverWorx offers unlimited bandwidth (web traffic) usage on its hosting packages. However, this is subject to reasonable and responsible usage, as determined at WeaverWorx's discretion. WeaverWorx reserves the right to upgrade Clients deemed to have excessive bandwidth usage to a more suitable hosting package, which will better suit their requirements. Clients will be given notice of such upgrade, and will be informed of any Fee implications.

8.2 Disk Space on hosting packages may only be used for website content, domain e-mails and related system files. General data storage, archiving or file sharing of documents, files or media not directly related to the website content is strictly prohibited. Unauthorised storage or distribution of copyrighted materials is prohibited.

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8.3 WeaverWorx will not be liable or responsible for the backing up, restoration or loss of data under any circumstances. Clients are solely responsible for ensuring that their data is regularly backed up and for restoring such backups in the event of data loss or corruption.

8.4 WeaverWorx prohibits Clients from doing the following on WeaverWorx servers:

- a. Running applications that are not production-ready. Any applications on the hosting platform must be optimised with respect to memory usage and must have appropriate data indexing.
- b. Running applications with inadequate security controls.
- c. Generating significant side-channel traffic from an application, whether by design or otherwise. Databases should be stored locally, and remote content should be cached.
- d. Failure to maintain proper “housekeeping” on a shared server including storing or generating useless content, including comment spam, unused cache files, log file and database entries.
- e. Storing malicious content, such as malware or links to malware.
- f. Monopolizing server resources, including CPU time, memory, network and disk bandwidth.
- g. Maintaining long-running processes and long-running database queries.
- h. Storing or running back-door shells, mass mailing scripts, proxy servers, web spiders, phishing content, or peer-to-peer software.
- i. iSending bulk mail of any form, particularly mail that cannot be efficiently delivered due to volume or incorrect addresses.
- j. Using weak passwords.
- k. Sharing security credentials with untrusted parties.
- l. Running Torrents for download or Seed Servers.
- m. Running TOR (or other Online Anonymity Services).
- n. Otherwise circumventing the Acceptable Use Policy or intended use of the product.

## 9. Domains

All domain registrations and renewals are to be paid in advance. It is the Client's responsibility to renew their domain names with WeaverWorx.

Expiration of a domain can result in service disruption and loss of domain. WeaverWorx will not be responsible if a domain expires due to non-payment / late payment of the charges. All payments must be made not later than fourteen (14) working days before the expiry date.



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## 10. E-mails

- 10.1 E-mail boxes must be kept within their quota limits. E-mail accounts with many files can have an adverse effect on server performance. WeaverWorx has the following limit: 1 GB per mailbox, unless otherwise contracted in writing.
- 10.2 Individual e-mails that are 5 MB or larger may not be stored on the server for more than 1 month.
- 10.3 Periodical maintenance may be carried out on the e-mail box and e-mails older than 12 months deleted by WeaverWorx.
- 10.4 Clients must not use the e-mail hosting for inappropriate content and other undesired e-mails which can result in spamming or infecting the server. Under such circumstances, immediate action will be taken and the required files and data will be deleted without any prior notice.

## 11. Webmail

- 11.1 Webmail and other web-based e-mail services made available by WeaverWorx are provided on an “as is” basis without representations, warranties or conditions of any kind, and the Client acknowledges and agrees that WeaverWorx shall have no responsibility for, or liability in respect of, any aspect of the webmail services, including without limitation for any lost or damaged data or any acts or omissions of WeaverWorx. As webmail storage space is limited, some webmail messages may not be processed due to space constraints or message limitations.
- 11.2 Webmail is provided to individuals and for personal use only. Any unauthorised commercial use of the Webmail service, or resale of the Webmail service is expressly prohibited.

## 12. Search Engines

WeaverWorx does not guarantee any specific position / ranking in search engine results for your website. WeaverWorx performs basic on-site search engine optimisation according to current best practice.

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## **13. Cross Border Compatibility**

By using current versions of well supported content management systems such as “Wordpress”, WeaverWorx endeavours to ensure that the websites are compatible with all current modern web browsers such as the most recent versions of Internet Explorer, Firefox, Google Chrome and Safari. Third party extensions, where used, may not have the same level of support for all browsers. Where appropriate WeaverWorx will substitute alternative extensions or implement other solutions, on a best effort basis, where any incompatibilities are found.

## **14. E-commerce**

The Client is responsible for complying with all relevant laws relating to e-commerce, and to the full extent permitted by law will hold harmless, protect, and defend and indemnify WeaverWorx and its licensors, content providers, service providers, employees, agents, officers, directors, contractors and sub-contractors from any claim, penalty, tax, tariff loss or damage arising from the Client’s or the Client’s clients use of Internet electronic commerce.

## **15. Graphic Design**

WeaverWorx does not provide printing services. The Client must enter into an agreement directly with the printer of own choice. The Client must provide WeaverWorx with the printer’s contact details at the start of the Design Project. WeaverWorx will contact the printer to obtain written instructions/guidelines and printing requirements relevant to the Design Project.

A Design Project will only be released once it has been approved by the Client in writing, therefore WeaverWorx is not liable for any print errors.

## **16. User Responsibilities**

16.1 Clients are responsible for any misuse of WeaverWorx’s Services or the WeaverWorx Websites that occurs through the Client’s account. It is the Client’s responsibility to ensure that unauthorised persons do not gain access to or misuse WeaverWorx’s Service.

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16.2 Where the Client has authorised a minor to use any of the WeaverWorx Services or access to the WeaverWorx Websites, the Client accepts that as the parent/legal guardian of that minor, the Client is fully responsible for: the online conduct of such minor, controlling the minor's access to and use of any Services, software or websites, and the consequences of any misuse by the minor.

## 17. Confidential Information

17.1 The Client's "Confidential Information" includes information that WeaverWorx should reasonably believe to be confidential.

17.2 WeaverWorx's "Confidential Information" includes the Design Project specification, media (text, videos and images provided by the Client) and any custom source code of any Design Project.

17.3 All material considered confidential by either party shall be designated as confidential. Confidential Information shall not be disclosed to third parties and shall only be used as needed to perform the Service.

17.4 Confidential Information shall not include any information that is already known by the recipient, becomes publicly known through no fault of the recipient, or is received from a third party without a restriction on disclosure.

17.5 Confidential Information may only be disclosed if required to do so by law or if the disclosing party does so in the good faith belief that such a disclosure is reasonably necessary to:

- a. comply with legal process;
- b. enforce these Terms;
- c. respond to claims that any Content violates the rights of third parties;
- d. protect the rights, property, or personal safety of the disclosing party and officers, its clients or the general public.

## 18. Copyright

Copyright to the finished assembled work of Design Project produced by WeaverWorx is owned by WeaverWorx until the final payment is received. WeaverWorx retains the right to display graphics and other design elements as examples of their work in their portfolio.

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## 19. Marketing

To maintain their portfolio credentials and integrity, WeaverWorx, shall be entitled to place an unobtrusive credit with a hypertext link in the footer of any website designed by WeaverWorx. WeaverWorx is also entitled to reproduce samples of the Client's website in their portfolio and in their marketing material.

## 20. Illegal or Unlawful Activity

WeaverWorx reserves the right to take action against any individuals, companies or organisations that violate these terms, or engage in any illegal or unlawful activity while accessing WeaverWorx's services, to the fullest extent of the law. WeaverWorx reserves the right, at its sole discretion, to act against other types of abuse not listed in this document and to investigate or prevent illegal activities being committed on the WeaverWorx servers and websites. WeaverWorx does not waive its right to enforcement of these terms at any time, or prejudice its right to take subsequent action, should WeaverWorx fail, neglect or elect not to enforce a breach of these terms at any time.

## 21. Suspension or Termination of Services

21.1 The Client may terminate the agreement, or a particular Service, by giving one calendar month's notice to WeaverWorx via e-mail to [design@weaverworx.africa](mailto:design@weaverworx.africa). For example if notice is given on the 15th of January, termination will take effect on the 1st of March. Hosting fees paid in advance will be refunded pro rata, taking the 30 day termination period into account. However the Client will still be liable for any third party costs incurred during this period e.g. domain registration costs and third party software licences.

21.2 The Client acknowledges that WeaverWorx may terminate this Agreement by written notice, including e-mail, and without liability in the event of the termination of its agreement with an upstream licensee relevant to the provision of any connectivity Service.

21.3 WeaverWorx may, subject to this Agreement, suspend or terminate Services of a Client in its absolute discretion by providing e-mail notice if:

21.3.1 the Client commits a serious or repeated breach of the Agreement or the Client engages in any conduct which in WeaverWorx's opinion would have a negative impact on WeaverWorx, other clients or WeaverWorx's staff, or is detrimental to the welfare, good order or character of WeaverWorx; or

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- a. any part of the Fees is not paid in full when due; or
- b. WeaverWorx has reasonable cause to believe that the Client's use of the Services may result in the commission of a crime or is otherwise unlawful.

21.3.2 WeaverWorx reserve the right to effect such suspension or termination without notice, depending on the severity of the breach, but will undertake to inform Client where possible. Upon such suspension or termination, the Client will not be eligible for reimbursement / compensation, unless at WeaverWorx's discretion.

21.4 WeaverWorx reserve the right to terminate services where a Client has shown a repeated disregard for payment terms and consistently fails to make regular scheduled payments on time using approved payment methods. Notice of termination will be provided to the best of WeaverWorx's ability, but WeaverWorx will not be held liable for claims or requests for further provision of Services once a Client's services have been terminated due to non-payment.

## **22. Force Majeure**

WeaverWorx will not be responsible for any breach of this Agreement caused by circumstances beyond our control, including, but not limited to, any act of God, war, fire, earthquake, flood, strikes, labour disputes, accidents, riots, compliance with government orders, load shedding and failure of third-party suppliers.

## **23. Reservation and Non-Waiver of Rights**

WeaverWorx reserves the right to take action against any individuals, companies or organisations that violate these terms, or engage in any illegal or unlawful activity while accessing WeaverWorx's services, to the fullest extent of the law. WeaverWorx reserves the right, at its sole discretion, to act against other types of abuse not listed in this document and to investigate or prevent illegal activities being committed on the WeaverWorx servers and websites. WeaverWorx does not waive its right to enforcement of these terms at any time, or prejudice its right to take subsequent action, should WeaverWorx fail, neglect or elect not to enforce a breach of these terms at any time.