

in.house.media - Website Hosting Agreement

1. DEFINITIONS

- 1.1 In these Conditions, the following expressions shall have the following meanings:
"Additional Items" means any goods and/ or services that are provided by the Company in addition to the Services;
"the Company" means IHM Limited trading as In House Media and includes any subsidiary company of the Company and reference to the consent authority or agreement of the Company means consent authority or agreement in writing signed by a Director of the Company;
"Contract" means the order placed by the Customer with the Company on these terms and conditions and any other document or documents agreed by the Company to be incorporated in a Contract between the Company and the Customer;
"the Customer" means the person firm or company named below;
"the due date" means the first day of each month;
"the Services" means the services or combination of services that the Customer has ordered from the Company and as set out in the Company's order form (or previously agreed in other applicable documents which forms part of the Contract);
"Transgression" shall mean any breach of contract, tort or other act of default, omission or statement of the Company its employees, agents or subcontractors in respect of which the Company is liable to the Customer;
"Website" means the Customer's Website to be hosted by the Company on the Server as specified in the Company's order form (or previously agreed in other applicable documents which forms part of the Contract).
- 1.2 Terms defined in the Company's order form (or previously agreed in other applicable documents which forms part of the Contract) have the same meanings in these terms and conditions.

2. THE SERVICES

- 2.1 The Company shall provide the Services (being the hosting of the Customer's Website), to the Customer pursuant to these terms and conditions. No additions or modifications to or terms inconsistent with these terms and conditions shall be binding unless agreed in writing by the Company. In the event of any inconsistency between these terms and conditions and any other document forming part of the Contract, these terms and conditions shall be paramount unless expressly referred to and varied with the consent of the Company.

- 2.2 The Customer grants to the Company for the duration of this Agreement a licence to host the Website on the Server.

3. COMPANY OBLIGATIONS

- 3.1 The Company shall provide the Services to the Customer with reasonable skill and care and in a professional manner. All conditions, warranties or other terms concerning the Services which might otherwise be implied into the Contract (whether by statute or otherwise) are hereby expressly excluded.
- 3.2 The Company shall provide the Customer with a 24-hour contact service in order that it may notify the Company of any interruptions or any other problems with the Service. The Company shall use all reasonable endeavours to respond to the Customer's notification of interruptions or other problems and to rectify any problems with reasonable diligence.
- 3.3 The Company shall use all reasonable endeavours to ensure that access to the Website is available at an uptime level of 95%. For the avoidance of doubt the uptime availability level does not include downtime attributable to:
- 3.3.1 hardware or telecommunications failures;
- 3.3.2 interruptions to the flow of data to or from the internet,
- 3.3.3 changes, updates or repairs to the network or software which the Company uses as a platform to provide the Services,
- 3.3.4 the effects of the failure or interruption of the Services provided by third parties;
- 3.3.5 factors outside of the Company's reasonable control;
- 3.3.6 the Customer's actions or omissions (including without limitation, breach of the Customer's obligations set out in the Contract) or those of any third parties (including but not limited to breaks in the continuity of the electricity supply or of the telecoms link to the Company's server); and
- 3.3.7 interruptions to the Services resulting from any request by the Customer.
- 3.4 If the Service is suspended or interrupted the Company shall use all reasonable endeavours to restore the Service with minimum delay.
- 3.5 If the Company's order form states that a backup service is included, the Company will make reasonable efforts to protect and backup data for the Customer, at least once every 24 hours but the Company will not be liable for any lost, corrupted or destroyed data as a result of any suspension or interruption to the Service as a result of the Company providing such backup service. The Company does not guarantee the accuracy or regularity of the backup service. The Customer is also responsible for taking their own backups in connection with the Customer's use of the Services and the Customer is solely responsible for an independent backup of data stored on the Company's, or any third party providers' server, and network. The retrieving of back up files by the Company may be charged as an Additional Item.
- 3.6 The Company shall provide the Bandwidth specified in the Services and the hosting fee is based on that Bandwidth. If the Company becomes aware that the Customer's Website is using Bandwidth in excess of that specified in the Company's order form the Company will alert the Customer and the Customer shall pay an additional fee for such additional use based on the Company's standard charge for the increased Bandwidth used.
- 3.7 If the Company is requested to register or renew a domain name on behalf of the Customer, the Company shall use all reasonable endeavours to do so. However, the Company accepts no responsibility if, at the time of making the application for the registration or renewal, the domain name is no longer available, or the registration does not complete with the registry, for whatever reason. It is the customers responsibility to contact the Company to inform them to renew their domain name and check registrations complete.
- 3.8 If the Company is requested to submit details of the Customer's Website to any global search engines the Company shall make the appropriate applications to do so. However, the Company will not be liable for any delays in the processing of applications or any failure by the search engine to process or accept the application.

4. CUSTOMERS OBLIGATIONS

- 4.1 The Customer undertakes that the Website shall not be used directly or indirectly for any Unlawful purpose and that the Content shall not be Unlawful. For the purpose of this Contract the term "Unlawful" means in breach of any law, regulations or codes of practice in force, from time to time, in any jurisdiction and shall include but is not limited to: -
- 4.1.1 civil and criminal offences of copyright and trademark infringement;
- 4.1.2 transmission or display or posting of abusive, indecent, obscene or pornographic material;
- 4.1.3 commission of any criminal offence (including deliberate transmission of computer viruses) including but not limited to, pursuant to the Computer Misuse Act 1990 or similar legislation in any country;
- 4.1.4 any transmission or display or posting of any material which is defamatory, libellous, offensive, abusive, or menacing character or which causes annoyance, inconvenience or needless anxiety to any other person;
- 4.1.5 transmission or display or posting of any material in breach of the Data Protection Act 1998 (or any replacing statute) dealing with data protection or similar legislation in any other country or of any material which is confidential or is a trade secret;
- 4.1.6 use of the Website in any manner which is a violation or infringement of the rights of any individual, firm or company within the United Kingdom and elsewhere;
- 4.1.7 the use of the Website for purposes generally deemed to be unacceptable, including spamming, hacking, phreaking, password cracking, pirated software, ROMS, emulators, or IP spoofing or providing "links" or "how to" information to such material;
- 4.1.8 misleading or misrepresentation.
- 4.2 The Customer will indemnify the Company against all and any losses and costs that the Company may incur as a result of any breach of Clause 4.1 above.
- 4.3 The Customer will ensure that that the Website complies with the laws, regulations and requirements of any country from which it can be accessed.
- 4.4 If the Company has reasonable grounds for believing that there has been or that they may be a breach of this Agreement, and in particular a breach of Clause 4.1, the Company reserves the right to monitor any and all communications passing through the Server in connection with the Service.
- 4.5 If the Website is used for any unlawful use the Company may suspend or terminate the Services immediately and at the same time as suspension or termination occurs the Company shall notify the Customer.
- 4.6 The Customer shall comply with the Company's policies, from time to time, which are in place from time to time in respect of the Services and which are published at www.ihm.co.uk.

5. TERM AND PRICE

- 5.1 This Agreement will continue until and unless either party terminates the Agreement by serving one month's written notice on the other party (the "Term").
- 5.2 The Hosting fee for the Services shall be set out in the Company's order form. The Company reserves the right to increase the Hosting fee after providing the Customer with one month's written notice of the fee's increase.
- 5.3 The Customer shall pay the Hosting fee on the due date.
- 5.4 The Company reserves the right to terminate the Contract immediately if the Hosting fee is not received within 7 days of the due date.
- 5.5 Any Additional Items must be paid for within 30 days of the date of the invoice.
- 5.6 If all or part of the price for the Contract or any Additional Items remain unpaid after the due date the Company shall be entitled to charge interest on any unpaid balance at 4% above Barclays Bank plc lending base rate for the time being, such interest being paid in full together with the unpaid balance.

6. TERMINATION

- 6.1 The Company shall be entitled to terminate the Contract forthwith and recover all losses or damage resulting to the Company (including but without limitation to loss of profit or other consequential loss) if:
- 6.1.1 the Customer has a bankruptcy petition presented against him, or a bankruptcy order is made, if the Customer makes or seeks to make any composition or arrangement with his or its creditors, if the Customer makes a proposal to his creditors for a voluntary arrangement or applies for an interim order, if an encumbrancer takes possession of any of the Customer's assets, or any of the Customer's assets are taken in execution or process of law, if a petition is presented or an order is made or a resolution is passed for the winding up of the Customer, if a petition is presented or an order is made for an administration order to be made in relation to the Customer, or if a receiver or administrative receiver is appointed over any of the Customer's assets (or any analogous event occurs to the Customer in its jurisdiction); or
- 6.1.2 the Customer fails to make any payment owed to the Company on the due date as specified in Clause 5; or
- 6.1.3 the Customer is in breach of any contract with the Company (including this Contract) and fails to remedy the same within seven working days of written notice requiring the same or immediately if the breach shall be not be capable of the same.
- 6.2 Termination shall be without prejudice to the rights of any party accrued at the date of such termination.
- 6.3 Upon termination the Website shall be deleted from the Server, unless agreed otherwise by the parties.

7. INTELLECTUAL PROPERTY

- 7.1 Copyright in all software that is supplied by the Company remains the property of the Company or that of its licensor.
- 7.2 The Customer shall indemnify and keep the Company indemnified from and against the consequences of the Company suffering any claims of infringements of copyrights, patents, trademarks, industrial designs or other property rights arising from the provision of the Services.
- 7.3 In the event that any such infringement occurs or may occur, the Customer may request the Company to modify and / or amend the Website or infringing part thereof so that the same becomes non-infringing and if the Company agrees to modify and / or amend the Website the Company shall be entitled to charge for the additional cost for making the modifications and /or amendments which shall be chargeable at the Company's then current hourly rate.
- 7.4 The Customer warrants that it has obtained (and for future use, will obtain) all necessary consents, approvals and licences from any third party who has intellectual property rights incorporated as part of the Website, whether now or in the future.

8. PERFORMANCE AND FORCE MAJEURE

- 8.1 The Company shall take all reasonable steps to perform its obligations under the Contract. The Company shall not be liable for suspension or interruptions to the Service which shall not entitle the Customer to rescind the Contract.
- 8.2 Without prejudice to the generality of Clause 8.1, the Company shall have no liability for any delay or default in performance of any obligation caused directly or indirectly by breakdown or unavailability of computer hardware, software or parts thereof, telecoms connections or power supply or any other cause or causes beyond the Company's reasonable control.
- 8.3 The Company does not guarantee that the Customer or any third parties will be able to access the Website at any particular time. The Company does not warrant that the Services will be uninterrupted (including but not limited to due to hackers), error, bug or virus free, but will use reasonable endeavours to maintain an uninterrupted Service during core working hours (being 08.30 to 18.30, on a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business). The Customer acknowledges that the need for routine maintenance and error correction may result in down time and that the Company cannot control the timing or volume of attempts to access the Company's server.

9. EXEMPTIONS AND EXCLUSIONS

- 9.1 The Company shall not be liable to the Customer for any loss, injury or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Contract, or the Services except as specified in Clause 9.3 or to the extent to which it is otherwise unlawful to exclude such liability.
- 9.2 Notwithstanding the generality of 9.1 above, the Company expressly excludes liability for consequential loss, indirect damages, or corruption to other software or data, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 9.3 The Company accepts liability for death or personal injury to the extent that it results from the negligence of the Company, its agents or its employees or authorised representatives.
- 9.4 To the extent that the Company is held legally liable to the Customer for any single Transgression, the Company's liability for the same shall not exceed the value of the Contract. A number of Transgressions whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as a single Transgression.

10. NON-SOLICITATION OF STAFF

- 10.1 The Customer undertakes that it shall not during this Agreement and for a period of one-year following its expiry or termination employ or contract the services of any person who is or was employed or engaged by the Company in connection with the Contract.

11. WAIVER

- 11.1 Failure or neglect by the Company to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of the Company's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Company's rights to take subsequent action.

12. NOTICES

- 12.1 Any notice required under the Contract shall be deemed served if sent by registered or recorded delivery post or by facsimile or e-mail addressed to the party for whom it is intended at such party's registered or main office or last known address and shall be deemed to have been served 48 hours after the date of posting or 12 hours after the time of transmission if by facsimile or e-mail.

13. LEGAL CONSTRUCTION, INTERPRETATION AND LIMITS OF THE CONTRACT

- 13.1 The Contract shall be governed in all respects by English Law and shall be subject to the jurisdiction of the English Courts. The text of this Contract and these terms and conditions written in the English language is the authentic text and any difficulties or uncertainties arising shall be solved solely by reference to that text.
- 13.2 Save for statement or representations confirmed in writing in this Contract, no oral statements of whatsoever nature and by whomsoever made shall form part of the Contract. In contracting with the Company the Customer acknowledges that he has not relied on any oral statements or representations made to him save those confirmed as aforesaid.
- 13.3 Clause headings are for convenience only and do not affect the construction of this document.