

## Mediamorphic Standard Terms & Conditions

### 1. Parties

"MediaMorphic"; and

"The Client"

MediaMorphic is a provider of New Media related services including website design and CD ROM production services.

The Client may from time to time require such services. This agreement sets out the framework terms which have been agreed between MediaMorphic and the Client for the provision of such New Media services and shall be supplemented from time to time by Schedules setting out specific details of such services requested by the Client.

Mediamorphic is the trading name of Steven Ellis.

These terms supersede any prior verbal agreement and any deviations from these terms must be agreed in writing.

### 2. Definitions

In these conditions, unless the context requires otherwise, the following words shall have the following meanings:

"we" or "us" means Mediamorphic

"you" means the Client.

"Agreed Service Level" means the levels of performance to be provided by MediaMorphic to the Client as set out in a Schedule;

"Agreement" means this master service level agreement;

"Support" means support@mediamorphic.com our location or such other location as MediaMorphic may notify to the Client from time to time;

"Clientware" means the systems and software provided by the Client in connection with the Services;

"Contract" means a contract for the provision of the Services which arises from the acceptance by MediaMorphic of a Schedule and which shall be on and subject to the terms of this Agreement together with the Schedule;

"Hardware" means the equipment, cabling and systems provided by our suppliers in connection with the Services;

"IPRs" means any and all intellectual property rights including without limit any and all patents, design rights, database rights, copyright, know-how, moral rights, trade secrets, confidential information, trade marks, service marks, trade names and goodwill;

"Keywords" means those words notified to the Client by MediaMorphic which control the Clients access to some of the Services including without limit a password and username;

"Netiquette" means generally accepted standards for use of the Internet such as but not limited to sending bulk unsolicited Email, mail bombing, misrepresenting the holding of third party authorisation and impersonating another person;

"Notified Maintenance" means essential maintenance to be carried out by MediaMorphic and or a supplier or suppliers in relation to the Services, Clientware, Hardware and/or Software which has been notified to the Client at least 7 days prior to its commencement;

"Schedule" means the schedule describing the services requested by the Client including without limit details of the requested Bandwidth, Hardware, Storage Space and Software together with details of the Clientware;

"Services" means the new media related services described in any Schedule made under this agreement and which are supplied by MediaMorphic or its supplier(s) under these terms and any schedules to this ;

"Service Disruption" means any disruption in the Services which causes a failure to meet the Agreed Service Level as a result of any failure of the Hardware, Software or MediaMorphic personnel who provide the Services and which does not result from any breach by the Client of the Contract, a force majeure event (as defined by Condition 12 below) or any Suspension Event as referred to in Condition 2 below;

"Software" means the computer software programs provided by MediaMorphic in connection with the Services;

"Working Days" means any day which is not a Saturday, a Sunday or a bank or public holiday in England;

"Working Hours" means 10am — 6pm on each Working Day; and

"User" means any individual, corporation, partnership or firm who access the Internet web site(s) hosted on the Hardware / Clientware in connection with the Services.

### **3. The Service you can expect from us**

- 3.1. The Services, Software, Hardware and Clientware shall be as described in the Contract and the Schedules. All Schedules shall be deemed to be an offer from the Client and shall only be deemed accepted by MediaMorphic when counter-signed by an authorised representative of MediaMorphic. In the event of a conflict between any term in this Agreement and those in the Schedule then the term in the Schedule shall prevail.
- 3.2. The terms of the Contract contain the whole agreement between you and MediaMorphic. All other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, warranties as to satisfactory quality or fitness for purpose are excluded to the fullest extent permitted by law;
- 3.3. We do not represent or warrant that:
  - 3.3.1. the Services will meet all your requirements;
  - 3.3.2. the Services will be uninterrupted, timely, secure, or entirely error-free;
  - 3.3.3. any results obtained from using the Services will be accurate, complete or current.
- 3.4. If you require any variations or additions to the Services, Hardware and/or Software or Clientware to those set out in an agreed Schedule then we must agree a new Schedule which will either supersede or vary the existing Schedule.
- 3.5. We reserve the right at any time to amend, improve or correct the Services, Software and/or Hardware (or any part or them) provided that the modification is not substantial or unreasonable. We shall endeavour to give the Client reasonable notice of such modifications but this may not always be possible and we shall not be liable to you or to any third party for any such modification or any failure to give such notice.
- 3.6. We shall use our reasonable endeavours to provide our Services in accordance with the desired launch date however the time for the provision of the Services shall not be of the essence.
- 3.7. We shall notify you when we have produced or installed the Services and you shall (as soon as possible and in any event within 5 Working Days) review and assess the Services against the Agreed Service Levels as set out in the Schedule. If you reasonably consider that the Services do not meet the Agreed Service Levels then you shall immediately notify us in writing giving written details of the failure. We shall use our reasonable endeavours to rectify any failure of the Services to meet the Agreed Service Levels (except where the failure is due to the occurrence of any Suspension Event as defined below) as soon as possible whereupon we shall ask you to reassess the Services as above. If you do not inform us within 5 Working Days of delivery or installation of the services (or where we rectify the Services within 5 working days of our notification of completion of rectification of the Services) then you shall be deemed to have accepted the Services and the Services shall be deemed to meet the Agreed Service Levels as at the date of installation, delivery or rectification.
- 3.8. We reserve the right at our sole discretion to suspend the Services (temporarily or permanently) for any unscheduled maintenance or any of the following (each of the following shall be a "Suspension Event"):
  - 3.8.1. Notified Maintenance;
  - 3.8.2. issue by any competent authority of an order which is binding on us and which affects the Services;
  - 3.8.3. if you fail to pay any amount due under the Contract on time
  - 3.8.4. if any events occur which would entitle us to terminate the Contract;
  - 3.8.5. the Bandwidth you use in relation to the Services exceeds the agreed level and MediaMorphic determines in its sole discretion that such suspension is necessary to protect all and any Internet solutions provided by MediaMorphic from time to time; or

3.8.6. failure or deficiencies in the Clientware.

3.9. Upon the occurrence of any Service Disruption we shall, provided that you continue to perform your obligations under the Contract and any other contract between you and us, give you a credit under and in accordance with the applicable Schedule. If no credit is specified in the schedule then you will not be entitled to any credit;

#### 4. Your Responsibilities

You agree that you shall:

- 4.1. immediately notify us if you become aware of any unauthorised use of all or any of the Services, Software, Clientware and/or Hardware;
- 4.2. not use the Services, Software, Clientware and/or Hardware or allow them to be used for any unlawful purpose for the publication, linking to, issue or display of any "Unlawful Material". "Unlawful material" shall include but is not limited to pirated software, material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights (including without limit IPRs) of any third party, or which is a breach of the Criminal Law or which encourages criminal acts or contains any virus, worm, trojan horse or other harmful code. "Unlawful" means a breach of English law or a breach of the laws of your country or a breach of the law of any other jurisdiction in which the results of such purpose or such material can be accessed or the effects felt.
- 4.3. not use the Services, Software, Clientware and/or Hardware or allow them to be used for the publication, linking to, issue or display of any material which in the absolute discretion of MediaMorphic may harm MediaMorphic or any of its clients or bring MediaMorphic into disrepute or may call into question any action taken by MediaMorphic on the Client's behalf;
- 4.4. not use the Services, Software, Clientware and/or Hardware or allow them to be used in breach of good "Netiquette Practices";
- 4.5. remove or prevent access to any material which is hosted on any of the Hardware and/or Clientware and which causes or is likely to cause the Client to be in breach of the Contract
- 4.6. ensure that it has all necessary consents, permissions and licences to make use of the Services including without limit registration under the Data Protection Act 1984 and 1998;
- 4.7. not provide any technical or other information obtained from us or relating to the Services, this Agreement or the Contract to any person, company, firm or government which you know or ought reasonably be aware may directly or indirectly breach English law;
- 4.8. not, in breach of good Netiquette practices, use any service provided by any third party (including without limit an Internet web site and/or Email) for the publication, linking to, issue or display of any material which refers to an Internet web site hosted by us or any other services offered by MediaMorphic from time to time;
- 4.9. ensure that all material or data hosted by MediaMorphic on any web site operated by you from time to time or communicated through such site or using the Clientware, Hardware and/or Software is checked for viruses and other harmful code;
- 4.10. immediately notify us if any Service Disruption arises and we shall then use our reasonable endeavours to rectify such Service Disruption as soon as reasonably practicable;
- 4.11. be responsible for keeping regular back ups of all material and data hosted by MediaMorphic on any web site operated by the Client from time to time using the Clientware, Hardware and/or Software;
- 4.12. ensure that all Keywords are at all times kept confidential, used properly and not disclosed to unauthorised people and if you have any reason to believe that any Keyword has become known to someone not authorised to use it or if any Keyword is being or is likely to be used in an unauthorised way or of any other breach of security then you shall inform us immediately.
- 4.13. be entirely liable for all activities conducted and charges incurred under your Keywords whether authorised by you or not and you acknowledge that we shall not be liable for any loss of confidentiality or for any damages arising from your failure to comply with these terms;
- 4.14. ensure that all your communication details which are provided to us are at all times true, current, accurate and complete. You shall promptly notify us of any such details and you agree that we shall not be liable for any costs, damages or loss which you may suffer or incur as a result of your failure to notify such changes to us.

## **5. Payment of the price**

- 5.1. You shall pay the price for the Services as set out and agreed between us in the Schedule. The price is non-refundable and is payable either by cash or cheque.
- 5.2. We are entitled to vary our price from time to time however we shall give you at least one month's notice of such increase. If you are not satisfied with the proposed increase then you are entitled to terminate the Contract (but this will not affect or prejudice any ongoing work between MediaMorphic and you). You may give written notice to terminate the Contract within one month of the date of the variation notice failing which you shall be deemed to have agreed to the variation.
- 5.3. For the provision of Hosting Services, the price covers the permitted bandwidth (the agreed connection rate) as stated in the Schedule. If you exceed this limit then we reserve the right to make additional charges for the usage above the limit at our prevailing charge rate. We will where reasonably possible try to let you know if your bandwidth use exceeds the agreed level.
- 5.4. You must pay the price and all other amounts due under the Schedule by the due date in British Pounds Sterling or otherwise the currency as may be specified on our invoice. Payment shall only be deemed to be received by us upon receipt of cleared funds. Payment shall be made in full without any abatement, set off, counterclaim or deduction on any grounds.
- 5.5. It is a condition of the Contract that the Contract price and all other amounts due from you are paid on time. We shall be entitled to recover from you any reasonable expenses incurred by us in recovering overdue amounts and/or interest on overdue amounts (before and after judgment) at annual rate of 5% above the base lending rate of Barclays Bank plc calculated daily until payment is made in full.
- 5.6. We will retain a general and particular lien over all Clientware until you have paid all claims and money in full to us. We may take a lien on any of your accounts whatsoever. If you fail to satisfy any lien within a reasonable time from the date of notice of exercise then the Clientware may be sold in or towards satisfaction of every such lien and we will account to you for any excess.
- 5.7. The Intellectual Property Rights to all Clientware, Software and design remains ours until you have paid all claims and money to us in full.

## **6. Indemnity**

You agree to keep us fully indemnified against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred by us arising from any of the following:

- 6.1. your breach of the Contract and/or this Agreement or
- 6.2. your negligence or other act, omission or default;
- 6.3. the operation or break down of any equipment or software owned or used by you including without limit the Clientware but not the Hardware and/or Software;
- 6.4. your use or misuse of the Services;
- 6.5. your infringement (whether innocently, knowingly or otherwise) of third party rights (including without limit IPRs).

## **7. Limitation of our liability**

- 7.1. Nothing in the Agreement, Contract or these Conditions shall exclude or limit our liability for death or personal injury resulting from our negligence or fraudulent misrepresentation nor affect the statutory rights of natural or legal persons who deal as consumers.
- 7.2. The Client acknowledges that the allocation of risk in the Contract reflects the price paid for the Services, Hardware and Software and that it is not within our control how or for what purposes they are used. If any exclusion or limit of liability in the Contract is held to be invalid by a Court within the Jurisdiction of England or Wales and we become liable for loss or damage and that loss and damage is permitted to be limited by law then our liability is limited to the amount you paid for the Services.
- 7.3. We have no further liability for any loss and damage or costs whatsoever which you may incur;

- 7.4. We are not liable to you for any loss arising from any material, data or instructions supplied whether digitally or otherwise by the Client or on its behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form or arising from late arrival or non-arrival or any other fault by you or by your agent or apparent agent;
- 7.5. You may not bring any action, claim or demand arising out of or in connection with the Contract or this Agreement may be brought by the Client against us more than **1 year** after the cause of action has accrued.
- 7.6. We are not responsible for any delay, malfunction, non performance or other degradation of performance of any of the Services, Hardware or Software caused by or resulting from your request for us to alter, modify or amend the same
- 7.7. We nor any other person involved in the creation, production or supply of the Services, Hardware or Software shall be liable to you or any other person for any loss in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof by reason of or in connection with this Agreement, the Contract or the Services, Hardware or Software for any:
  - 7.7.1. pure economic loss of any kind whatsoever,
  - 7.7.2. loss of profit, data, business contracts, revenues or anticipated savings, or
  - 7.7.3. damage to the Client's reputation or goodwill, or
  - 7.7.4. loss resulting from any claim made by any third party, or
  - 7.7.5. special, indirect or consequential loss or damage of any nature whatsoever, and you shall indemnify us from and against any claim which may be made against us in respect thereof. Some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for consequential or incidental damages and therefore the above may not apply to you;

## 8. Confidentiality

- 8.1. All confidential information of either party or of any of its customers disclosed to or discovered by the other as a result of the provision of the Services shall be regarded as disclosed in confidence and shall only be used in connection with the performance of its obligations under this Agreement and/or the Contract and not be passed on to third party and/or in any way be made use of at any time either during or after the termination of this Agreement and/or the Contract save with consent of the other unless that information in any event had come into the public domain.
- 8.2. You shall promptly notify us if you become aware of a breach of confidence in relation to the Services, the Contract and/or this Agreement and shall give us all reasonable assistance in connection with any proceedings we may institute against a third party at our expense.

## 9. Termination

- 9.1. This Agreement shall commence upon the date appearing at the top of the first page. Unless otherwise agreed in writing by MediaMorphic (in the Schedule or otherwise). The minimum period of each Contract for the provision of the Services detailed in its corresponding Schedule is 12 months from date on which such Services are accepted or deemed accepted by you pursuant to Condition 2 above (the "Initial Term") and thereafter shall continue for further periods of 12 months (each being a "Renewed Term") unless and until the Client or MediaMorphic serves at least one month's written notice of termination on the other prior to the expiry of the Initial Term or a Renewal Term, such notice to expire at the end of such Initial or Renewed Term.
- 9.2. The Contract may be terminated:
  - 9.2.1. immediately by us if you fail to pay us any sums due under the Contract within 14 days of their due date;
  - 9.2.2. immediately by a party if the other commits any material breach of these conditions and which (in the case of a breach capable of being remedied) has not been remedied within a reasonable time period as may be specified in a formal request in writing or by electronic email to remedy the same;
  - 9.2.3. immediately by written notice from us if you commit any material breach of these conditions which may impact upon or affect our Services or Servers or our ability to provide the services;
  - 9.2.4. immediately by either party if the other shall convene a meeting with its creditors or if a proposal shall be made for a voluntary arrangement within the meaning of part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme of arrangement with (or the assignment for the benefit of) its creditors or if the other shall be

unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 in the case of a Company or Section 268 of the Insolvency Act 1986 in the case of an individual or if a trustee receiver or administrative receiver or similar officer is appointed in respect of all or any of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or any other steps are taken for the winding up or the making of an administrative order (otherwise than for the purposes of a solvent amalgamation or reconstruction).

9.2.5. We shall be entitled to immediately terminate this Agreement and any other contract between us and you upon the termination of the Contract. Any termination of this Agreement and/or a Contract shall be without prejudice to you continuing obligations under this Agreement and under a Contract not expressly terminated by us which shall continue in full force and effect.

9.2.6. Upon termination or expiry of the Contract all amounts payable by you to MediaMorphic shall become immediately due and we shall be entitled to immediately cease the provision of our Services.

## 10. **Circumstances beyond our control**

We shall not be liable for any breach of this agreement if we are prevented from or delayed in performing any of our obligations under the Conditions, the Agreement or the Contract due to circumstances beyond our control such as but not limited to governmental acts, war, riots, strikes or trade disputes (including by and with our own employees), technical failure, general availability of the Internet, power failure, communications failure, weather, flood, fire or explosion, natural or local emergency or terrorism.

## 11. **Miscellaneous terms**

11.1. If we fail or delay to exercise any of our rights or remedies this will not constitute a waiver.

11.2. Any notice or other communication to be given by a party under this Agreement or the Contract must be in writing and must be given by delivery at or sending by first class post or by Email or facsimile transmission to the last known postal, Email address or relevant telecommunications number of the other party. Notices shall be deemed to have been received when in the ordinary course of the means of transmission it would be received by the addressee. To prove the giving of a notice it shall be sufficient to show it was despatched. A notice shall have effect from the sooner of its actual or deemed receipt by the addressee.

11.3. Except as expressly provided herein, the parties do not intend any term of this Agreement or the Contract to be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

11.4. Any termination of this Agreement or the Contract shall be without prejudice to any other rights or remedies which a party may be entitled to thereunder or at law and shall not effect any previous rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into continue in force upon or after such termination.

11.5. If any term of this Agreement or the Contract is held by any competent authority to be unlawful, invalid or unenforceable in whole or in part then the provision shall be deemed to be severable from the remaining provisions and shall not affect their validity or enforceability.

11.6. The Client shall not share, re-sell or attempt to share or re-sell the Services, transfer or attempt to transfer this Agreement or the Contract or permit any third party to use and/or access any of the for any purpose without prior consent of MediaMorphic.

11.7. This Agreement and the Contract will be governed by English Law and the Client submits to the exclusive jurisdiction of the English Courts.

11.8. We have various offers from time to time and each web space offer has allocated bandwidth limits. If you exceed your limits this will slow down your site. We recommend that you upgrade to more webspace and bandwidth when your limits are exceeded. If you do not upgrade and your site affects the performance of our servers then we may be forced to suspend the offending site until a fee is received to increase bandwidth.