

**Terms and Conditions for the Provision of Hosting Services
("Conditions")**

1. Interpretation

In these Conditions the following words shall have the following meanings:

Agency means Richard White Advertising and Marketing Limited t/a White Agency (CRN 02076239) whose principal place of business is at 61 North Bar Within, Beverley, East Yorkshire, HU17 8DG;

Agreement means the contract between the Agency and the Client for the provision of the Services, incorporating these Conditions and the Proposal;

Business Day means a day which is not a Saturday or Sunday or public or bank holiday in England and Wales;

Business Hours means 9 am to 5:30 pm on each Business Day;

Client means the client named in the Proposal;

Client System means the Client's computer system in connection with which the Services are provided;

Fees means the hosting charges set out in the Proposal, as may be amended from time to time by the Agency in accordance with the terms of the Agreement;

Netiquette means generally accepted standards and codes of practice for use of the internet including but not limited to refraining from (i) sending bulk email (whether opt-in, unsolicited or otherwise), (ii) mail bombing and (iii) impersonating another person, organisation or website;

Proposal means the proposal submitted by the Agency to the Client by email or otherwise in writing for the provision of the Services in response to the Client's request;

Server means a dedicated server made available by the Agency for use by the Client in connection with the Services including any replacement servers made available by the Agency pursuant to condition 4.5;

Services those hosting services provided by the Agency to the Client pursuant to the Agreement.

2. The Services

3. In consideration of the payment by the Client of the Fees, the Agency agrees to provide the hosting Services to the Client on the terms of the Agreement.

4. The Agency will use its reasonable endeavours to provide the Services in accordance with any timescale set out in the Proposal or otherwise agreed with the Client, provided that the Agency shall not be liable to the Client where it fails to meet any such timescale.

5. The Agency will not be liable for any failure to provide the Services resulting from any breach by the Client or its employees, agents or subcontractors of the terms of the Agreement.

6. The Agreement constitutes the entire agreement between the Agency and the Client in relation to the Services and all other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law. The Client may not rely upon any representation made or given by any employee of the Agency prior to the Agreement being entered into unless otherwise stated in the Agreement.

7. The Agency reserves the right, at any time and from time to time, to improve, correct or otherwise modify all or any of the Services. The Agency will endeavour to give the Client reasonable notice of any such modification, where this is reasonably practicable.

8. The Client shall have no right of ownership or physical access to the Server.

9. Suspension

10. Without prejudice to its other rights and remedies, the Agency may at its sole discretion suspend the provision of the whole or any part of the Services (temporarily or permanently) and will have no liability to the Client to provide the Services on the occurrence of any of the following events:

11. any notified or unscheduled upgrade or maintenance of any IT system used by the Agency;

12. any issue by any competent authority of a binding order which affects the Agency's provision of the Services;

13. if the Client fails to pay any Fees or any other sums owing to the Agency by the Client when they fall due;

14. if an event occurs and the Agency deems it to be appropriate to terminate the Agreement;

15. if the bandwidth, hard disk drive or computer memory used by the Client in relation to the Services exceeds any agreed or stipulated level and the Agency determines in its sole discretion that suspension is necessary to protect all or any internet solutions provided by the Agency from time to time;

16. any failure, deficiency or incompatibility in the Client System including but not limited to hardware, server corruption and security breaches; or

17. any failure by the Client, or any of the Client's employees, agents or other authorised representatives, to adhere to any of the provisions outlined in condition 4.0 in respect of the Services.

18. In the event that the Agency suspends provision of the Services in accordance with condition 13, the Agency will only be obliged to recommence provision during Business Hours and once the Client has paid all relevant outstanding sums in cleared funds.

19. Service Delivery

20. To the fullest extent permitted by law and save as provided elsewhere in the Agreement, the Services are provided by the Agency to the Client on an "as is" and "as available" basis and, except where otherwise stated in the Agreement, no warranty or representation (whether express or implied) of any kind is given by the Agency in

connection with the Agreement, including but not limited to any warranty as to satisfactory quality and fitness for a particular purpose. In particular, the Agency gives no warranty or representation that:

21. the Services will meet the Client's requirements;

22. the Services will be provided on an uninterrupted, timely, secure or error-free basis or without failure; or

23. any results obtained from use of the Services will be accurate, complete or current.

24. The Agency warrants that it will provide the Services with reasonable care and skill. The Agency will not be liable for a breach of such warranty unless the Client notifies the Agency in writing of such failure within 10 days of the Client becoming aware of the failure.

25. The Agency shall have no liability for any loss or damage to any data stored on the Server or any backup medium.

26. The Agency shall use its reasonable endeavours to make available to the Client at all times the Services but the Agency shall not, in any event, be liable for interruptions of service or down-time of the Server and shall not be liable for any non-receipt or misrouting of email or for any other failure of email.

27. Should the Agency become aware of a Server fault or any error or interruption affecting the Services, the Agency will at its own discretion repair the Server or provide an alternative server as a replacement as soon as practicably possible during Business Hours.

28. The Agency does not warrant that any data, content or settings present on the original Server will be transferred to any replacement server.

29. Client's Obligations

30. The Client agrees that it shall:

31. immediately notify the Agency on becoming aware of any unauthorised use of all or any of the Services and/or relevant part of the Client System;

32. remove or prevent access to any material hosted on any part of the Client System which causes or is likely to cause the Client to be in breach of the Agreement;

33. ensure that it has all necessary consents, permissions and licences to make use of the Services including registration and appropriate consents and approvals under the Data Protection Act 1998;

34. ensure that all material or data hosted by the Agency on any web site operated by the Client from time to time or communicated through such site or using the Client System is checked for viruses and other harmful code and has appropriate security patches applied;

35. be entirely liable for all activities conducted and charges incurred under the Client's passwords and user names whether authorised by the Client or not, and the Client further acknowledges that the Agency shall not be liable for any loss (whether financial or otherwise) arising from the Client's inability to comply with the Agreement;

36. comply with any security policy notified to the Client from time to time by the Agency and, in particular, ensure that all passwords and user names provided to the Client by the Agency are at all times kept confidential, used properly and not disclosed to unauthorised people. If the Client has any reason to believe that any password or user name has become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way or of any other breach of security then the Client will inform the Agency immediately;

37. ensure that the Client's systems (including the Client System) meet any minimum system specifications notified by the Agency to the Client from time to time;

38. promptly provide to the Agency and/or the Agency's consultants, employees and agents such information and assistance as they may reasonably require in order to be able to provide the Services; and

39. procure all necessary rights from third parties (including intellectual property licences of computer software and website content including ringtones and music) which are from time to time required in order for the Agency to be able legally to provide the Services to the Client.

40. The Client agrees that it shall not:

41. use the Services or the Client System, or allow them to be used, for any unlawful or fraudulent purpose or for the publication, distribution, copying, linking to, issue or display of any unlawful material (including any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights (including but not limited to intellectual property rights) of any third party or which is or encourages criminal acts or contains any virus, worm, trojan horse or other harmful code) whether under English law or regulation, the laws or regulations of the Client's country of domicile or any other place where the results of such purpose or the material in question can be accessed;

42. use the Services or the Client System, or allow them to be used, to host material which constitutes or relates to hacking, cracking, warez, chatrooms, IRC, web proxy and mailing list scripts, freeware, shareware, trial software or any software in respect of which the Client is not the author and copyright owner;

43. use the Services or the Client System, or allow them to be used, for the publication, linking to, issue or display of any material which in the absolute discretion of the Agency may harm or bring into disrepute the Agency or any of the Agency's associated companies,

- suppliers or clients, or which calls into question any action taken by the Agency on the Client's behalf;
- 44.** use the Services or the Client System, or allow them to be used, in a way which constitutes harassment or is in breach of Netiquette, including but not limited to using any service provided by any third party (including 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 the Agency or any other products or services offered by the Agency from time to time without the Agency's prior written consent;
- 45.** provide any technical or other information obtained from the Agency and/or relating to the Services to any person which the Client is aware or ought reasonably be aware may directly or indirectly lead to a breach of any law or regulation; or
- 46.** misuse the Agency's resources, which shall include but not be limited to employing applications which stream media, consume excessive CPU time, memory or storage space, incorporate CGI based message forums using flat file databases (rather than PHP/ASP message forums) or which constitute a web cam application which maintains a constant FTP connection uploading an image at regular intervals,
- and the Client acknowledges and agrees that if it is unsure about the permissibility of any content that it intends to be hosted using the Services, the Client shall obtain the Agency's prior written approval before uploading such content. The Agency reserves the right to determine what constitutes acceptable use of the Services.
- 47.** If, in the Agency's opinion, the Client is in breach of any of the provisions contained in condition 40 then the Agency may without prejudice to its other rights and remedies immediately by written notice to the Client:
- 48.** suspend the provision of the Services;
- 49.** terminate the Agreement; or
- 50.** amend or remove any content appearing on any website or other system hosted by the Agency on behalf of the Client (including any Client System),
- and the Agency may notify any relevant public authority (governmental or otherwise including the police or other enforcement authority) of any such breach, where the Agency deems such notification to be necessary.
- 51. Payment Terms**
- 52.** Subject to condition 53 the Fees are payable by the Client to the Agency on the basis set out in the Proposal.
- 53.** The Agency shall be entitled to amend the Fees by giving the Client not less than 60 days' written notice, such notice to expire at the end of the Initial Period (as defined in condition 75) or any subsequent anniversary of that date.
- 54.** Any sums payable by the Client to the Agency under the Agreement are exclusive of value added tax or any similar taxes, levies or duties, which will be added to such sums and be payable by the Client at the prevailing rate.
- 55.** All sums payable to the Agency under the Agreement shall be paid by the Client in full with no set off or deduction.
- 56. Liability**
- 57.** The provisions of this condition 56 and the provisions of condition 4 together set out the entire liability of the Agency (including any liability for the acts or omissions of its consultants, employees, agents and authorised representatives) to the Client in respect of:
- 58.** any breach of the Agreement; and
- 59.** any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 60.** Nothing in the Agreement shall exclude or limit the liability of the Agency for death or personal injury caused by the negligence of the Agency, fraud or a breach of section 12 of the Sale of Goods Act 1979.
- 61.** Subject to condition 60 the liability of the Agency in contract, tort (including negligence or breach of statutory duty), misrepresentation (other than fraudulent misrepresentation) or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall:
- 62.** not exceed a sum of £500 per claim for loss of or damage to tangible property; and
- 63.** not exceed a sum equal to 125% of all sums paid by the Client to the Agency pursuant to the Agreement for the hosting Services (excluding VAT and expenses) during the 12 month period immediately preceding the claim less any amounts paid by the Agency in the same period pursuant to any claim; and
- 64.** in any event shall not extend to loss of profit, loss of business, loss of revenue, loss of contract, loss of goodwill or otherwise (whether direct or indirect), or any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, whether or not caused by the negligence of the Agency or its employees, agents or authorised representatives, which arises out of or in connection with the Agreement.
- 65.** In the event that the Client accesses the Services from a location outside the UK, the Client acknowledges and agrees that it shall do so on the Client's own initiative and shall be responsible for compliance with local laws.
- 66. Client Indemnity**
- The Client will fully indemnify and keep the Agency, its parent company, sister companies, subsidiaries and affiliates, officers, partners, directors, employees and agents fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred and arising from any of the following:
- 67.** the Client's breach of the Agreement, negligence or other default;
- 68.** the operation or break down of any IT systems owned or used by the Client, including the Client System but excluding any IT system owned by the Agency;
- 69.** the Client's use or misuse of the Services;
- 70.** the provision by the Agency of Services making use of information or specifications supplied by the Client;
- 71.** the Client's failure to procure all necessary rights from third parties which are from time to time required in order for the Agency to be able legally to provide the Services; and
- 72.** the use by the Agency in connection with the Agreement of the Client System and any content or material provided by the Client in connection with the Agreement for use by the Agency in connection with the Services.
- 73. Force Majeure**
- Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use of or access to any IT system owned, used or accessed by the Agency or the Client (including but not limited to hacking), explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, or by any act, event, omission or accident beyond that party's reasonable control.
- 74. Term and Termination**
- Without prejudice to the remaining provisions of this condition 74 and any other rights and remedies available to the Agency:
- 75.** Unless the Agreement is terminated earlier in accordance with its terms, the Agency will provide the Services for the period of 12 months from the date that the Proposal has been signed by both parties (the "Initial Period") and will continue to do so thereafter, subject to termination by either party serving not less than 30 days' written notice on the other party, such notice to expire on or at any time after the end of the Initial Period.
- 76.** The Agency may immediately terminate the Agreement (or at the Agency's option, any part of it) by notice in writing to the Client if the Client fails to pay to the Agency any sum due under the Agreement by the due date for payment.
- 77.** Either party may terminate the Agreement (or, at its option, any part of it) forthwith by notice in writing to the other if the other party:
- 78.** is in material breach of the Agreement and fails (where the breach is capable of remedy) to remedy the breach within 21 days of the receipt of a request in writing to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of the Agreement;
- 79.** becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;
- 80.** is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 81.** has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, has passed a resolution for its winding-up, or has a petition presented to any court for its winding-up or for an administration order; or
- 82.** has ceased or threatened to cease to trade.
- 83. Consequences of Termination**
- 84.** Termination of the Agreement shall be without prejudice to the rights and duties of either party accrued prior to termination.
- 85.** Those parts of the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 86.** The Agency may without notice remove the Client's data from the Agency's systems following termination.
- 87.** Upon termination of the Agreement, the Client will forthwith pay all outstanding invoices raised by the Agency pursuant to the Agreement.
- 88. General**
- 89.** The Client shall not assign the benefit or delegate the burden of the Agreement or sub-license any of its rights under the Agreement without the Agency's prior written consent.
- 90.** If any provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.
- 91.** Failure or delay by either party in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement.
- 92.** Any waiver by either party of any breach of, or any default under, any provision of the Agreement by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.
- 93.** Any notice required or permitted to be given by either party to the other under the Agreement shall be in writing addressed to that other

party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

- 94.** No variation or amendment to the Agreement shall be effective unless agreed in writing and signed by an authorised representative of the Agency.
- 95.** In the event of there being any conflict or inconsistency between the Proposal and the Conditions, the Proposal shall take precedence.
- 96.** Nothing in the Agreement confers on any third party any benefit or any right to enforce any provision of the Agreement.
- 97.** The formation, existence, construction, performance, validity and all aspects of the Agreement shall be governed by English law and the parties submit to the jurisdiction of the English courts.