

# 2Dmedia Limited Terms and Conditions

## Definition of terms:

The "website" and "product" means the content, images, text, HTML, scripting, software, databases, program code, video, data, manuals and domain name either registered by 2Dmedia on the client's behalf, or directly by the client and related files used by the website.

"2Dmedia ", "2Dmedia web hosting", "us", "we" and "our" means 2Dmedia Limited. "System" means the computer system, programming and communication facilities required by 2Dmedia for the operation of the service. "Service" and "Product" means the services that 2Dmedia provides, such as web hosting, website design, print design, software development and graphic design. "Client ", "Customer" and "You" means the party or parties who enter into this agreement with 2Dmedia.

## Terms of payment

In consideration of 2Dmedia providing you with the service, you agree to payment as follows: You shall pay on invoice the amount owed within 30 days of the date of issue of the invoice. Late payment of any money owed will incur statutory interest plus a recovery charge of £20 per month, up to the maximum amount allowed under the UK late payments legislation. If we file a court claim are forced to hand your account over to a debt collection agency you will be liable for any additional collection costs incurred. If an invoice is to be disputed, notice must be given in writing within 14 days of the invoice date. At our sole discretion, we reserve the right to allocate payments against any outstanding invoice and may re-allocate payments or parts thereof at any time. Deposit payments are non-refundable. All sales are final, no refunds or pro-rata refunds/credits will be issued for services or subscription services that have not been utilised or that have been cancelled prior to the end of their term except at our sole discretion. Subscriptions no longer required should be cancelled prior to the commencement of the new period and start of the new service contract period. If the client's company should fall into liquidation or administration, or receive 'Maximum Risk' or worse credit scoring from Experian we reserve the right to suspend and cease the provision of services, and/or suspend credit facilities and require the return of any goods that have not been paid for in full.

## Assignment and Delegation

We may assign or transfer our rights and responsibilities under this contract to another party. We may also subcontract the performance of any of our responsibilities under this contract to another party. You may not assign or transfer any of your rights or responsibilities under this contract to anyone else without our prior written consent. Our services, licenses and subscriptions are for the use of the client's company and may not be transferred to a different company without our explicit consent and agreement in writing.

## Liabilities

You agree that 2Dmedia will not be liable for any indirect or consequential damages, including but not limited to loss of profits or for any claim made from the client by any other party, even though 2Dmedia may have been notified of such damage or claims. We shall not be liable to you for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform obligations under this Agreement where such delay is caused directly or indirectly by an act of God, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of, or delay in, transportation or any other cause beyond our control whatsoever. You agree to defend, indemnify and hold us harmless from and against any and all claims, losses, liabilities and expenses (including legal fees) related to or arising out of the services provided by us to you under this Agreement, including without limitation claims made by third parties (including your customers) related to any false advertising claims, liability claims for products or services sold by you, claims for patent, copyright or trademark infringement, claims due to disruption or malfunction of services provided hereunder.

Due to the public nature of the Internet, all material submitted by you for publication will be considered publicly accessible. 2Dmedia does not screen in advance customer material submitted to 2Dmedia for publication. 2Dmedia's publication of material submitted by customers does not create any express or implied approval by 2Dmedia of such material, nor does it indicate that such material complies with the terms of this agreement.

2Dmedia is not responsible for customers' files residing on 2Dmedia servers or any form of data storage provided, recommended or required by 2Dmedia or its products and or services. You are solely responsible for independent backup of data stored on 2Dmedia servers or all data accessed or utilised by 2Dmedia products or services. 2Dmedia cannot accept any liability for loss or corruption of data that has been stored on 2Dmedia servers, or corrupted as a result of 2Dmedia software, or 2Dmedia employees and or agents under any circumstances whatsoever.

## Relationship of the Parties

The parties intend that an independent contractor relationship will be created by this contract, and that no partnership, joint venture or employee/employer relationship is intended or implied.

## Disclaimer

2Dmedia shall not be liable for any damages suffered by any user of these services, nor be liable for any claims or damages whatsoever or howsoever caused, including without limitations to property damage, loss of profits, interruption of business, intellectual property infringement, or for any special, consequential or incidental damages, whether arising out of the client's inability to use the service, breaching of warranty, contract, liability or otherwise.

Services are provided by 2Dmedia on an 'as is, as available' basis. 2Dmedia specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose. In no event shall 2Dmedia be liable for any consequential, indirect, special or incidental damages, even if 2Dmedia has been advised by the customer of the possibility of such potential loss or damage. 2Dmedia is not liable for the protection or privacy of electronic mail or other information transferred through the Internet or any other network provider its customers may utilise. 2Dmedia does not warrant to comply with the Data Protection Act 1998. 2Dmedia does not represent or warrant that customers will receive continual and uninterrupted service either through provision of software, databases or internet services during the term of this agreement. In no event shall

2Dmedia be liable to customers for any damages resulting from or related to any failure or delay of 2Dmedia to provide service under this agreement. Notwithstanding anything herein contained or implied no employee, agent or director of 2Dmedia will be liable to the customer for any breach of duty or care in contract, tort, equity or otherwise in relation to the performance of obligations under this contract or in relation to the subject matter of this contract.

This agreement shall become effective on the date of acceptance of your offer. You shall be deemed to have read this agreement and agree to be bound by this agreement. This agreement shall supersede all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this agreement. If, for any reason, any provisions of this contract cannot be enforced or relied on by either of us, all other terms of our contract with you remain binding.

## Content

It is your responsibility to provide us with the required information about your business. 2Dmedia take no responsibility for errors in content supplied by you for the web site or software provided. Any changes thus incurred may be chargeable at standard rates.

Unless specified otherwise, it is your responsibility to provide all necessary text and graphic materials that make up the content of the design. No refund will be made in the event that you fail to provide sufficient content to complete the web site, design work or software.

All content must be supplied in a suitable digital format unless agreed otherwise beforehand. Images should be supplied as jpeg, gif or Photoshop format. Text should be supplied as a Microsoft Word or ASCII text file. Failure to supply material in digital format may result in extra charges being made for processing content for use on your web site or design work. Where the content that is provided is in a form where a significant amount of copywriting is required, a further charge may be made.

2Dmedia, its staff and subcontractors will have access to any data supplied, whatever format this is received in, and including that obtained via API services on behalf of the client.

You grant 2Dmedia permission to utilise logos and any other company identity for the purposes of creating the website, service or software.

You agree to indemnify 2Dmedia from any and all claims arising from your negligence or inability to obtain proper copyright permissions for all content supplied or used in the website, design, service or product.

A design credit with a link to the 2Dmedia website will appear on the main home page of your web site either in text or graphic format. The link will be designed to fit the overall design of the site.

You should provide 2Dmedia with copies of your terms and conditions and any privacy or other statements that you wish to be incorporated into the design. The client must make clear all specifications and requirements for the website design, product or service that is to be carried out before work begins, or once work has been completed within a reasonable time. Changes to this specification may be chargeable if differing significantly from the initial request.

In the event that 2Dmedia is unable to complete a website, service or product because of lack of text and/or pictures, then text will be added using "lorum ipsum" text and pictures using library pictures. At this point the website or service will be considered completed and invoiced accordingly under our standard payment terms. Final text and pictures will be added when these are supplied by the client. All services may be used for lawful purposes only.

## Design

We will provide you with our estimated timescale for progress and completion of the project and will use reasonable endeavours to meet those timescales, as long as you perform your obligations promptly, but, unless we agree otherwise, the dates are estimates only and we cannot guarantee that they will be met and shall accept no liability as a result of failure to meet estimates. We shall have no liability to you nor be deemed to be in breach of this contract if we are delayed in performing or unable to perform any of our obligations under it due to circumstances beyond our reasonable control.

Any design issues will be assessed against the standard of PC based internet viewing in the current version of Internet Explorer available at the time of the project commencement.

## Promotion

Where 2Dmedia undertakes promotion of the website through Search Engine optimisation no guarantee is given that rankings can be achieved on particular Engines. Resubmission will take place as and when we deem appropriate and may vary in frequency depending on the level of maintenance updates undertaken.

## Delivery of Website Content

On completion of work, the Deliverables shall be uploaded to 2Dmedia hosting servers. You shall keep secure any identification, password and other confidential information relating to your account.

You shall notify 2Dmedia immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information. On reasonable notice to the Customer, 2Dmedia shall take any and all steps it determines to be necessary to maintain the Services, which may include (without limitation) altering or suspending Services during maintenance. 2Dmedia will try to ensure that such maintenance, alterations and suspensions to the Services occur outside of normal business hours where possible.

In the case of an individual User, you warrant that you are at least 18 years of age and if the User is a company, you warrant that the Services will not be used by anyone under the age of 18 years.

2Dmedia's sole liability for any breach of this warranty shall be to re-perform the affected Services. In the event that 2Dmedia determines that re-performance is not commercially feasible, 2Dmedia may terminate this Agreement and will receive payment for the work to date on a pro-rata basis. What is or is not commercially feasible shall be in the sole discretion of 2Dmedia.

## Hosting

The Customer represents and warrants that the following content will not be stored on or linked to 2Dmedia's servers or services:

Illegal Material or purposes- This includes copyrighted works, commercial audio, video, or music files, and any third party material or

intellectual property in violation of any governmental regulation and / or without the proper authorisations.

Adult Material – Includes all pornography, erotic images, or otherwise lewd or obscene content. The designation of "adult material" is left entirely to the discretion of 2Dmedia.

Copyrighted software that is distributed illegally – including pirated software, emulators, hacking, and password cracking. This also includes any sites which provide "links to" or "how to" information about such material.

Spamming - i.e. the unsolicited sending of electronic mail messages is also prohibited and the Customer warrants and represents that there will be no practice of spamming in connection with the Services. We reserve the right to suspend or limit, temporarily or permanently any client email or web hosting account if it is found to be sending unsolicited email or being used in a manner that could lead to damage to 2Dmedia operated servers and IP addresses. 2Dmedia reserve the right to levy additional charges in the event of such abuse.

2Dmedia reserve the right to terminate any hosting services in the event that usage becomes unreasonable and results in the deterioration of the service to other clients. This includes CPU, memory or bandwidth usage deemed to be excessive in the opinion of 2Dmedia.

While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers and we shall be under no liability for non-receipt or mis-routing of email or for any other failure of email.

2Dmedia will not be held responsible for any inaccuracies or errors, delays or unobtainability arising from the site or the host for any reason whatsoever. Any problems with the site must be reported as soon as possible and will be rectified as soon as practical. No responsibility will be accepted as to any losses or problems arising from the site for any reason unless specifically agreed in writing beforehand.

Hosting and other subscription services may be suspended, restricted or terminated without notice in the event that a client account is in arrears (invoices overdue) and we may levy a fee for reactivating services, if reactivation is possible and offered (a reactivation option is not guaranteed). We reserve the right not to offer a renewal option.

## Domain Name Reservation

Domain names are registered with a company chosen by 2Dmedia, or registered by the client with a suitable company of their choice. 2Dmedia reserve the right to register domain names and set up web hosting with any company of their choosing. 2Dmedia assume no responsibility whatsoever for any problems arising from these choices, and the site owner must abide by any such terms put forward by the domain registrar, domain registration company and web host.

All domain names registered by 2Dmedia on behalf of client remain the property of 2Dmedia until the balance on the customers account has been cleared in full. If the domain name stated above has been registered by 2Dmedia on the behalf of the client, the client accepts full responsibility for all future costs of the domain name, and complete responsibility for the domain and its use.

## Software Licensing

You will retain ownership of copyright, trademarks and other intellectual property rights in materials that you provide to us for use in the design and build of your website, product or service. All copyright, trade marks, patents created, developed, subsisting or used in or in connection with the design or development of the product will be retained by us unless agreed otherwise in writing. Ownership of the Intellectual Property Rights of the product will remain with 2Dmedia. The client may not copy any part of the product for resale or distribution to a third party, or use part or the entire product in development of a separate product, website or software at a later date. The product must retain credits to 2Dmedia in the places that they were originally placed, if any. If present, scripting remains the property of 2Dmedia and is used under license within the stated domain name and product, for the sole purpose of utilising and running the product. Product licenses are not transferable.

2Dmedia will at all times retain ownership of intellectual property provided to the client as part of the service. Unless expressly stated in writing, 2Dmedia are merely granting a license to use the software and or code on a single use basis with no transfer of ownership rights to the client whatsoever. In the event that this license is breached 2Dmedia reserve the right to claim for a full account of profits received as a result in conjunction with any other damages proscribed by law as well as cease any and all obligations to provision or license the software.

## Non Waiver

Failure by any party to enforce any right or obligation with respect to any matter arising in connection with this contract shall not constitute a waiver as to that matter or any other matter either then or in the future. Any waiver of any right or obligation under this contract shall only be of any force and effect if such waiver is in writing and is expressly stated to be a waiver of a specified right or obligation under this contract.

## Validity of the agreement

2Dmedia reserves the right to cease immediately without liability (other than the refund of unearned prepaid service fees, excluding non-refundable deposit payments) to provide the service and to terminate this agreement if you should go into liquidation or bankruptcy, or if you fail to meet any obligation in accordance with this agreement subject to our terms or usage policy, or fail to settle your account in full within 30 days of the date specified.

## Applicable law

This agreement shall be deemed to be an agreement made in England and shall be subject to, governed by and interpreted in accordance with the laws of England and Wales. These Conditions shall be governed by the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the Courts of England and Wales. The headings in these Conditions are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning, or interpretation of any of the Conditions.