

# HOSTING SERVICE AGREEMENT TERMS & CONDITIONS

## 1. PARTIES

- 1.1. This Agreement is made between you the subscriber ("Subscriber") and Dial Media Group Limited (formerly Dial Internet Limited), Company No. 3123148 registered in the UK having its registered office at Southfield House Broadford Park Shalford Surrey GU4 8EP ("DMG").

## 2. THE SERVICE

- 2.1. DMG will provide the Subscriber with hosting services to maintain the availability of the Subscriber's web site or electronic mail addresses via DMG's servers and related services as described in product literature from time to time ("the Service"). The Service also includes access to DMG's help desk which is staffed Monday to Friday (excluding bank holidays) 9.00am – 5.30pm.
- 2.2. DMG aims to maintain a 24 hour presence for the Subscriber's website and 24 hour access for the Subscriber but cannot guarantee a continuous uninterrupted service.
- 2.3. From time to time certain Points of Presence, servers, or the whole or part of the network may be closed down for routine repair or maintenance work. DMG will give as much notice as in the circumstances is reasonable and will endeavour to carry out such work during the scheduled maintenance periods as published from time to time.
- 2.4. Neither DMG nor any other party has control over the Internet that is a global decentralised network of computer systems. Service interruptions may occur due to causes beyond DMG's control such as system malfunctions or failures of other parties. In these circumstances, DMG will use its best endeavours to restore the Service as soon as reasonably practicable.
- 2.5. DMG will use all reasonable efforts to provide you with the Service by the date DMG agrees with you, but cannot be responsible for matters outside DMG's own control.
- 2.6. DMG reserve the right (but do not assume any obligation) to inspect the content of data that the Subscriber transmits and receives to ensure compliance with this Agreement or any applicable laws regulations or codes of practice. DMG also reserve the right to disclose the content of data that the Subscriber transmits and receives or remove offending material if required to do so by the police or other law enforcement authorities.
- 2.7. DMG exercise no control over the content of the information passing through the network and make no warranty as to its quality, accuracy or freedom from defects or viruses.
- 2.8. The Subscriber acknowledges that neither the Internet nor the DMG server is secure and that DMG cannot guarantee the security of any of the Subscriber's information.

## 3. PAYMENT TERMS

- 3.1. All set up and installation charges are due not later than the date the Service becomes available for use by the Subscriber.
- 3.2. Subscriptions may be paid monthly, quarterly or annually in advance as agreed at the commencement of this Agreement. These charges are due whether or not there has been on-line activity during such period. If DMG does not receive payment in full by the due date the Subscriber's account may be suspended. If after 30 days from being suspended DMG has not received payment in full of the outstanding debt, the Subscriber's account and the Service may be terminated.
- 3.3. DMG reserves the right to vary the amount of any fee or charge from time to time and will provide at least 30 days notice to the Subscriber. E-mail notices will be sent to the Subscriber in advance of such changes taking effect. Continued use of the Service after the effective date of a change will constitute acceptance.

## 4. SUBSCRIBER'S OBLIGATIONS

- 4.1. The Subscriber will be responsible for producing HTML files, execution scripts, applets and applications and uploading them electronically. The Subscriber is responsible for ensuring that all uploaded materials function as the Subscriber intends. DMG reserves the right to suspend the service where scripts uploaded by the Subscriber are deemed to compromise DMG's servers and/or network.
- 4.2. The Subscriber is responsible for providing all telephone, computer hardware and equipment necessary to gain access to the Service. It is also the Subscriber's responsibility to ensure that the Subscriber's equipment will be compatible with the Service.
- 4.3. Site traffic volumes for the website referred to at clause 2.1 above are limited to the specified limit in the SLA. DMG reserve the right to exercise any of the rights at clause 5 below if a Subscriber's website on a DMG server receives excessive traffic such that DMG's servers, equipment, network or DMG's ability to provide services to customers are affected.
- 4.4. The Subscriber is responsible for all use of the Subscriber's account. If the Subscriber suspects that there is, or has been, unauthorised use of the Subscriber's password, the Subscriber should notify DMG immediately and have the applicable password changed.
- 4.5. DMG does not control the messages, information or files that the Subscriber transmits or receives. If a Subscriber has engaged in activities or if DMG believes a Subscriber has engaged in activities which are illegal or prohibited under this Agreement DMG may exercise any of the rights set out at clause 5 below:
  - 4.5.1. The Subscriber must not use the Service to transmit or receive information that is obscene, threatening, menacing, offensive, defamatory, in breach of confidence or otherwise unlawful.
  - 4.5.2. The Subscriber must not transmit or receive material that is in breach of copyright or any other intellectual property rights. If the Subscriber wishes to transmit, receive or post material protected by any such rights it is the Subscriber's responsibility to obtain the owner's written permission.
  - 4.5.3. The Subscriber agrees that the Subscriber will, when using service, observe the provisions of the Data Protection Act 1984 and subsequent amending legislation.
  - 4.5.4. The Subscriber will not knowingly or recklessly transmit or receive material which contains viruses or other code or defects which are likely to cause damage to any computer system or data or engage any other activity which is in breach of the Computer Misuse Act 1990.
  - 4.5.5. The Subscriber may not use the Service to engage in activity that is in breach of any applicable national or international laws.
  - 4.5.6. If any advertisement or offer for sale of goods or services is displayed on a Subscriber's website such advertisement or offer for sale of goods or services must comply with the code of practice of the UK Advertising Standards Authority.
  - 4.5.7. The Subscriber agrees to observe and comply with the requirements of any Acceptable Use Policy, which DMG may notify to the Subscriber from time to time.
- 4.6. The Service provided is non-transferable and for use only by the individual or corporation subscribing to the Service.

## 5. SUSPENSION OR TERMINATION OF SERVICE

- 5.1. In the event of the Subscriber engaging in any activities which are in breach of this Agreement, bankruptcy or insolvency proceedings are brought against the Subscriber, a receiver is appointed over any of the Subscriber's assets or the Subscriber goes into liquidation, DMG may, at its sole discretion, and without prejudice to any other legal rights or remedies which it may have (in any order), take any one of the following actions;

- 5.1.1. Notify the Subscriber by e-mail or other means that the Subscriber appears to be engaged in prohibited activity. The Subscriber will then have 5 calendar days to show cause why DMG should not take further action;
  - 5.1.2. Delete an offending message;
  - 5.1.3. Suspend the Service;
  - 5.1.4. Terminate the Service.
- 5.2. Either party may terminate this Agreement by giving the other at least 30 days notice in writing.
  - 5.3. No refund of advance payments for the unused portion of the Service will be made to the Subscriber if a Subscriber terminates an account during a billing period or if DMG terminates this agreement in accordance with clause 5.1 above.
  - 5.4. Without prejudice to the generality of clause 6.4 of this Agreement, DMG shall have a right to recover from the Subscriber the cost to DMG in terms of staff time spent dealing with technical and other problems which arise as a result of any use of the Subscriber's account for unlawful or prohibited activities.

## 6. LIMITATION OF LIABILITY AND INDEMNITY

- 6.1. DMG shall provide the Service in accordance with the warranties given in clause 2. Save as expressly set out in this Agreement all conditions or warranties that may be implied or incorporated into this Agreement by law or otherwise are hereby expressly excluded to the fullest extent permitted by law.
- 6.2. The liability of DMG (if any) in contract, tort, negligence or otherwise arising out of or in connection with this Agreement, in respect of all defaults related or unrelated, occurring in any one year will not exceed in aggregate the charges received by DMG from the Subscriber during that year.
- 6.3. In no event will DMG be liable for any indirect or consequential loss or damage of any kind (including without limitation loss of profits, business interruptions, or loss, corruption or mis-delivery of data) however caused and whether arising under contract, tort (including negligence) or otherwise.
- 6.4. The Subscriber agrees to indemnify DMG against any claims brought by a third party resulting from the Subscriber's use of the Service and in respect of any losses or liabilities incurred directly by DMG as a result of the Subscriber's breach or non-observance of any of these terms and conditions.
- 6.5. The Subscriber shall pay all costs, damages, awards, fees (including any reasonable legal fees) and judgements awarded against DMG arising from any such claims and shall provide DMG with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claims, at the Subscriber's sole expense.
- 6.6. The Subscriber agrees that DMG's network vendor(s) shall be third-party beneficiaries of the provisions of this Agreement.
- 6.7. The provisions of this clause 6 shall survive any termination of this Agreement.

## 7. GENERAL

- 7.1. DMG reserves the right to vary these terms and conditions from time to time and will provide at least 30 days notice to the Subscriber. E-mail notices will be sent to the Subscriber in advance of such changes taking effect. Continued use of the Service after the effective date of a change will constitute acceptance.
- 7.2. The terms and conditions contained in this Agreement constitute the entire agreement between the Subscriber and between DMG and supersedes all other communications.
- 7.3. The Subscriber acknowledges that they have read and accept the terms of this Agreement. Use of the service shall be deemed as acceptance of the terms of this Agreement.
- 7.4. This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the Subscriber hereby submits to the exclusive jurisdiction of the courts of England and Wales.