

## **WEBSITE TERMS AND CONDITIONS**

### **MTC MEDIA LIMITED**

These Conditions (defined below) will govern the Contract (defined below). We expect you to read through them carefully. If you do not agree with these Conditions, you will not be entitled to enter into a Contract.

#### **1. DEFINITIONS**

1.1 In these Terms and Conditions the following words shall have the meanings set opposite:-

"Action Plan"	means the document We will send to the Client detailing the objectives and Project development, areas of the Website, key features, cost outline, timeline, standard payment terms of Services to be provided by Us to the Client;
"Additional Fee"	means the fee payable in respect of the Additional Services as further detailed in Clause 5;
"Additional Services"	means any Services requested by the Client which is in addition to the Basic Specification;
"Additional Specification"	means the detailed description relating to the Additional Services as agreed between the parties in writing in accordance with the terms of the Conditions;
"Annual Renewal"	means the renewal charge paid by the Client to Us for annual subscription Services, including but not limited to domain name registration and Hosting Fees;
"Bandwidth"	means the amount of data transferred over the network connection measures in megabytes;
"Basic Fee"	means the fee payable in consideration of the Project in accordance with the Action Plan;
"Basic Development"	means the design and build of the Project in accordance with the Basic Specification, including but not limited to Website design and programming;
"Basic Specification"	means the description relating to the basic content and functionality requirements of the Project, as detailed in the Action Plan;
"Change Request"	means a form (in a format to be agreed between the parties) submitted by either party to the other which requests a change to the Project;

"Charges"	means the Charges to be paid by the Client to Us as agreed in writing in the Action Plan, including but not limited to the Hosting Fee, Basic Fee and Additional Fee, along with Our latest published prices for products and Services requested or incurred during the Term;
"Client"	means a customer or any person on behalf of a customer who makes use of the Services;
"Client's Materials"	means any text, audio, audio visual, visual works or any other materials provided by the Client to Us for use in undertaking the Services and/or for inclusion in the Project;
"Client's Requirements"	means the information and description supplied by the Client with respect to its requirements for the Project;
"Commencement Date"	means the latter of the date upon which We receive a signed copy of the Conditions and/or the date upon which funds received from the Client for the deposit of the Basic Fee clears in Our bank account;
"Confidential Information"	means information of either party designated as confidential or information of either party which ought reasonably to be regarded as confidential including, without limitation, any Intellectual Property Rights, know-how, trade secrets, source codes, object codes or software;
"Contract"	means the Contract between Us and the Client consisting of the Action Plan and Conditions, formed when the Client returns the Action Plan and Conditions signed, along with a non-refundable deposit of the Basic Fee;
"Conditions"	means these Terms and Conditions;
"Downtime"	means in respect of any calendar month the total time during which the Hosting Services are not available other than as a result of a Planned Outage;
"Force Majeure"	means any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of either party and without limiting the generality thereof shall include the following: strikes, lock outs or other industrial action; civil commotion, riot, invasion, war threat or preparation for war; fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster; impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
"Hosting Fee"	means the fee payable in consideration of the Hosting Services, in accordance with the Action

	Plan;
"Hosting Services"	means the service provided by Us of hosting the Website on the Internet in accordance with Clause 8 of the Conditions and the Action Plan;
"Intellectual Property Rights"	means any patents, copyright, registered designs, unregistered designs, trade marks (whether registered or unregistered), technical information, confidential information, know-how, inventions, semi-conductor topography rights, database rights, all software, source codes and object codes and any other industrial or intellectual property rights whether existing in the United Kingdom and/or elsewhere in any and all applications for any of the foregoing and any and all rights to apply for any of the foregoing;
"Internet"	means the global data network comprising of internet connected networks using TCP/IP (Transmission Control Protocol/Internet Protocol);
"Launch Date"	means the date, after completion of the Project and full payment is received, upon which the Services will begin between Us and the Client;
"Minimum Contract Term"	means the minimum period of service as specified in Clause 2;
"Planned Outage"	means any period during which the Client cannot process an application, transaction or send or receive emails via the Website or gain access to the Website as a result of maintenance and/or support of the Hosting Services by Us;
"Project"	means those Services as requested by the Client, to be provided by Us;
"Server"	means the computer server, equipment or gateway operated by Us or third parties on our behalf in connection with the provision of Services;
"Services"	means the Domain Name Registration, Website Design and Hosting Services, Bandwidth provision for Website, email, e-commerce solutions, m-commerce solutions, training and any and all other services or facility provided by Us to the Client;
"Term"	means the period of the Contract beginning after the end of the Minimum Contract Term, as set out in Clause 2.2;
"Source Code"	means any programming and/or code excluding HTML used in the Project;
"United Kingdom"	means England, Wales, Scotland and Northern Ireland, Isle of Man and Channel Islands;
"We/Us/Our"	means MTC Media Limited, a company registered under the Companies Act (Registered Company

Number SC285534) and having a place of business at Shed 26, Unit 35, City Quay, Dundee, Angus, Scotland, UK;

"Website" means the information resource created on behalf of the Client and which is to be made available via the Internet by Us.

## **2 COMMENCEMENT and MINIMUM CONTRACT TERM**

- 2.1 The Contract for Services shall commence on the Commencement Date. The Services will be provided for a Minimum Contract Term of 12 months.
- 2.2 Unless the Contract is terminated in accordance with Clause 13, the Term shall automatically continue for one or more consecutive period(s) of twelve (12) months.

## **3 DOMAIN NAME REGISTRATION and RENEWALS**

- 3.1 All domain registrations are governed by the registrant body organisation which we must adhere to at all times.  
For all .uk domains we would refer you to:  
Registrant terms: [www.nominet.org.uk/nominet-terms](http://www.nominet.org.uk/nominet-terms)  
Domain dispute policy: [www.nominet.org.uk/disputes/drs/policy/](http://www.nominet.org.uk/disputes/drs/policy/)  
Further information: [www.nominet.org.uk](http://www.nominet.org.uk)
- 3.2 We will make all endeavours to register the Clients chosen domain name. However, We make no guarantees that the domain name is capable of registration by or on behalf of the Client or that it will be registered in the Client's name. Once the domain name has been registered, we will send notification to the Client. Any action taken by the Client, before such notification is received by the Client, is at the Client's risk.
- 3.3 The Client shall have no right to bring any claim against Us in respect of refusal to register a domain name or cancellation of the domain name by the relevant naming authority. Any administration charge relating to the domain name paid by the Client to Us shall be non-refundable, notwithstanding refusal by the naming authority to register the Clients desired name.
- 3.4 The registration and use of the Client's domain name is subject to the Terms and Conditions of Use applied by the relevant naming authority. The Client shall ensure that it is aware of those Terms and Conditions and that it will comply with them.
- 3.5 We do not accept any liability in respect of the use by the Client of any domain name. Any dispute arising from the use of the domain name between the Client and any other person must be resolved between the parties concerned. In the event of such a dispute arising, We shall be entitled at Our discretion and without giving any reason, to withhold, suspend or cancel the domain name. We shall also be entitled to make representations to the relevant naming authority but will not be obliged to take part in any such dispute.
- 3.6 We give no warranty that the Client's domain name is or will continue to be available for the Client's use, or that no domain name is or will be registered with any relevant naming authority, which conflicts with the Client's domain name or which otherwise affects the Client's use of the Client's domain name.
- 3.7 We shall raise an invoice for payment of domain name renewal 75 days and a renewal reminder email 30 days prior to the renewal date with appropriate naming authority payment by the Client must be made within the normal 30 day terms. Notice of your intention not to renew the a domain must be received within the 30 days from the date of invoice by emailing [cancellations@mtcmedia.co.uk](mailto:cancellations@mtcmedia.co.uk) failing to do so will mean the

domain will automatically renew and the invoice will be due. Failure for any reason by the Client to make payment before the specified date will entitle Us to release the Client's domain name without any liability for loss suffered by the Client howsoever arising.

- 3.8 We will endeavour to release any domain name held by us to another provider appointed by the Client in a timely manner, provided full payment has been received by Us for that domain name and for any other Services provided.
- 3.9 An administration fee for releasing domains will be invoiced at £25 ex vat per domain this fee will need to be paid in full prior to the domain being released.
- 3.10 All domain disputes must be raised with mtc. via our [domainabuse@mtcmedia.co.uk](mailto:domainabuse@mtcmedia.co.uk) which we aim to respond to within 3 business days and we aim to resolve any issues within 10 business days. In the event that the issue cannot be resolved within the set time scale you will be updated to this effect and we will endeavour to give updates as quickly as possible.
- 3.11 General domain related customer support queries should be emailed to [domains@mtcmedia.co.uk](mailto:domains@mtcmedia.co.uk). Any domain abuse support can be emailed to [domainabuse@mtcmedia.co.uk](mailto:domainabuse@mtcmedia.co.uk). Our Helpdesk can also be contacted on 0844 804 2021 during normal office hours of 0900 – 1730 Monday to Friday. Support tickets can be submitted to mtc. both during office hours and out of hours via our online client portal. We aim to respond within 3 business days and we aim to resolve any issues within 10 business days.

#### **4 SERVICES**

In consideration of payment of the Charges to Us by the Client, We shall: -

- 4.1 provide the Client with the Basic Specification;
- 4.2 use reasonable endeavours to develop the Project in accordance with the Basic Specification;
- 4.3 use reasonable endeavours to build the Project in accordance with the Basic Specification;
- 4.4 where possible, provide any Additional Services in accordance with the instructions of the Client and the procedures set out in, and subject to the terms of, Clauses 4, 5 and 6 of this Agreement.

#### **5 DESIGN OF THE PROJECT**

- 5.1 Where applicable and requested by Us, the Client shall timeously provide the Client's Materials to Us in order that they may be included within the contents of the Project.
- 5.2 The Client shall provide Us with all necessary access to the Client's Materials, Client premises, personnel or computer systems at all reasonable times for the purposes of performing the Project in terms of the Action Plan. Any delay in the provision of access will result in a corresponding delay in the delivery of the Project.
- 5.3 In the event the Client requires Additional Services, the Client shall be responsible for providing Us with the Client's Requirements outlining the functions the Client requires for the Project. Where the Additional Services relate to the build, design or development of the Website, provide a sitemap (where available) and any information reasonably required by Us in order to produce

the Additional Specification. The Client shall take exclusive responsibility to ensure that the Client Requirements contain full details of and adequately reflect the Client's business and/or functional requirements in relation to the Additional Services. We shall have no responsibility for the appropriateness or accuracy of the Client's Requirements.

- 5.4 Based on the Client's Requirements, We shall use reasonable endeavours to prepare an Additional Specification for the Client as soon as practicable following submission of the Client's Requirements and any other information reasonably required by Us in order to provide the Additional Specification. The Client shall, within 7 days of being provided with the Additional Specification, either approve the Additional Specification or respond to Us with comments and/or requests for amendments. To the extent that any comments and/or requests for amendments are reasonable and within the scope of the Client's Requirements, We shall incorporate them into a revised Additional Specification. The Client shall, within 7 days of the date of receipt of the revised Additional Specification, either approve or reject the revised Additional Specification.
- 5.5 Where the Additional Specification is approved by the Client, a copy of the Additional Specification will be signed by the Client and returned to Us as soon as possible following approval and in any event before We carry out any further work.
- 5.6 In the event that the Additional Specification cannot be agreed in writing between Us and the Client, the development of the Project shall continue in accordance with the Basic Specification as detailed in the Action Plan. We shall remain entitled to receive payment of 25% of the Additional Fee.
- 5.7 Where the Client is unable to provide Us with a sitemap for the Website in terms of Clause 5.2 above, We will use reasonable endeavours to develop the same with the Client's assistance and shall be entitled to charge the Client for any costs in doing so. Any charges under this Clause 5.6 shall be in addition to the Basic Fee, Additional Fee and the Hosting Fee.
- 5.8 In the event that the Client requires amendments to the Project which are in Our reasonable opinion beyond the scope of the Additional Specification, the Client shall agree with Us in writing the actual change or addition required, all additional charges for implementing the change and the timescale within which it can be implemented (including amendment of the Launch Date where required by Us).
- 5.9 In the event that, prior to completion of the design and build of the Project, any change to the Project is required by the terms of any primary or secondary legislation or relevant European legislation or other legal requirement and in so far as such legislation or other legal requirement shall impact on the provision of the Services in terms of this Agreement, We shall (at the Client's expense) give effect to such change as soon as possible and shall agree with the Client any amendment to the Launch Date which is necessary as a result of such change to legislation or other legal requirement.
- 5.10 Any design (whether proposed or finalised) provided to the Client is provided as a basis for the development of the Project and We do not accept any liability for the consequences of the Client's use of the design with any third party or for any third party's use of the design.

## **6 BUILDING OF THE PROJECT**

- 6.1 We shall commence building the Project as detailed in this Clause 6 on the Commencement Date, subject to approval of any Additional Specification as detailed in Clause 5.
- 6.2 Upon completion of the building of the Project by Us, We shall notify the Client in writing. Where the Project is for the design and build of the Website, the Client shall have a period of fourteen days in which to test the Website. If during this period the Client identifies that the Website fails to comply in any material respect with the Basic Specification and any Additional Specification agreed between the parties, the Client shall specify such failures in writing to us.

- 6.3 In the event that failures are notified in terms of Clause 6.2 and are accepted by Us (acting reasonably) as being failures to comply in a material respect with the Basic Specification and/or Additional Specification, We shall use reasonable endeavours to rectify any such failures. We shall then retest the Website and upon satisfactory completion of such retesting, We shall issue notification of completion of the building of the Website in terms of Clause 6.2.
- 6.4 In the event that We are unable to rectify any failures in the Website referred to in Clause 6.3, then either party shall be entitled to terminate the Contract without liability to the other. For the avoidance of doubt, notwithstanding termination, We shall remain entitled to receive payment of 25% of the Additional Fee, where applicable.
- 6.5 In the event that no failures are notified to Us within the time period specified in Clause 6.2, the Client will be deemed to have accepted the Website.
- 6.6 Upon completion of the building of the Project in accordance with this Clause 6, We shall work with the Client to agree a Launch Date and the final balance for the project will be due and paid in full and cleared funds by the client prior to going live.
- 6.7 All projects will have recognition of MTC Media at the bottom of the site under this agreement. Usual wording "Designed and Developed by MTC Media Ltd" which will also link to the home page of [www.mtcmedia.co.uk](http://www.mtcmedia.co.uk)

## **7 CHANGES**

- 7.1 Any amendments or changes initiated by the Client after the Client has approved the Project in terms of Clause 5 shall be in terms of this Clause 7.
- 7.2 Either party may at any time submit a Change Request. Any such Change Request shall state full particulars of such change(s) and/or addition(s) proposed.
- 7.3 No Change Request shall be implemented unless and until both parties have agreed in writing the actual change(s) and/ or addition(s) required together with any impact and consequential amendment that may be necessary to any Charges and/or timescales referred to in the Conditions.
- 7.4 If the parties fail to agree on the Change Request and/or its impact, then the parties shall continue with the performance of the Project unamended save that any timetable (including the Launch Date) shall be amended in order to take account of any delay reasonably caused by the parties in considering the Change Request.
- 7.5 In the event that the Client submits a Change Request, and the parties do not proceed with the Change Request, We shall be entitled to recover from the Client all costs incurred in considering the consequential impact of the Change Request on the Charges and/or timescales.

## **8 HOSTING SERVICES**

- 8.1 In consideration of the Hosting Fee, We shall use reasonable endeavours to provide the Hosting Services in accordance with the Action Plan.
- 8.2 We shall endeavour to deliver the Hosting Services as detailed in the Action Plan by the agreed Launch Date but this will be an estimate only and We shall have no liability for any failures or delays to provide the Hosting Services by the Launch Date.
- 8.3 We shall use all reasonable endeavours to ensure the availability of the Services as detailed in the Action Plan.
- 8.4 We reserve the right to change any access identification allowing the Client to access the Hosting Services or to suspend the Hosting Services for the purposes of essential maintenance,

enhancement, updates, modernisation or other work deemed by Us as necessary to the operation of the Hosting Services. The Client shall be notified of the above as soon as reasonably possible and We will use all reasonable efforts to minimise the Downtime incurred in taking such actions by attempting such Planned Outages at times which do not directly affect Clients, but in no event guarantee this will be possible in all circumstances.

- 8.5 We shall raise an invoice for payment of the hosting renewal 75 days before the renewal date, payment by the Client must be made within the normal 30 day terms. Notice of your intention not to renew the hosting must be received within the 30 days from the date of invoice by emailing [cancellations@mtcmedia.co.uk](mailto:cancellations@mtcmedia.co.uk) failing to do so will mean the hosting will automatically renew and the invoice will be due. Failure for any reason by the Client to make payment before the specified date will entitle Us to suspend the Client's hoisting account without any liability for loss suffered by the Client howsoever arising.

## **9 BANDWIDTH UTILISATION**

MTC Media reserves the right to monitor the Client's bandwidth usage. If the Client's bandwidth usage exceeds the limited outlined in the Action Plan in one calendar month an excess charge of £3 per 1000mb will be payable by the Client.

## **10 WARRANTIES**

- 10.1 The Client represents, undertakes and warrants to Us that:-

10.1.1 the Client will use the Services allocated to the Client only for lawful purposes.

10.1.2 the Client will not use the Server in any manner which infringes any law or regulation of which infringes the rights of any third party, nor will the client authorise or permit any other person to do so;

10.1.3 the Client will not use the Hosting Services or Website to post, link to or transmit:-

10.1.3.1 any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;

10.1.3.2 any material containing a virus, Trojan horse or other hostile computer programme;

10.1.3.3 any material which constitutes, or encourages the commission of, a criminal offence of which infringes any Intellectual Property Rights or similar rights of any person which may subsist under the laws of any jurisdiction;

10.1.3.4 any activity contrary to the Computer Misuse Act 1990; and

10.1.3.5 the distribution of unsolicited email.

10.1.4 the Client shall keep secure any identification, password and other confidential information relating to the Client's account and shall notify Us immediately of any unknown or suspected unauthorised use of the Client's account or breach of security, including loss, theft or unauthorised disclosure of the Client's password or other security information.

10.1.5 the Client shall observe any procedures which We may from time to time prescribe and shall make no use of the Server which is detrimental to Our other clients.



- 10.2 The Client undertakes to provide all assistance to Us as We may reasonably require for the purposes of performing its obligations under the Contract.
- 10.3 Where a Client continues to permit such illegal or disreputable use, We will serve a warning notice, either by email or letter to the effect that the Services will be discontinued if the Client does not rectify the situation within 24 hours of receipt of the email or three days within the receipt of the letter. Where We suspend Services for contravention of this Clause, We can refuse to restore Services until We receive an acceptable assurance from the Client that there will be no further contravention.

## **11 CHARGES and PAYMENT**

- 11.1 All payments will be in UK Pounds Sterling. The Client will be liable for a "returned cheque" administration charge of £25 where Client's cheque is returned by the bank as unpaid for any reason.
- 11.2 All Charges payable by the Client for the Services shall be in accordance with the scale of charges and rates published from time to time by Us on Our website ([www.mtcmedia.co.uk](http://www.mtcmedia.co.uk)) or in the Action Plan and shall be due and payable thirty (30) days after the date of the invoice except for Project Invoices where the full balance is due for the project to go live.
- 11.3 Annual renewal invoices are due 30 days after invoice which are invoiced at least 75 days before the date of actual renewal and are due in advance of the service being provided. Failure to renew annual services will result in suspension of service and loss of domain name.
- 11.4 All monthly fees such as online marketing and PPC spend but not restricted to are due via Direct Debit and will be invoiced in accordance to the Direct Debit rules and regulations. Full terms for Direct Debits are sent with the Direct Debit form at the time of agreeing the service costs. The Direct Debit form must be completed and in place prior to the services starting.
- 11.5 Online Marketing and Monthly Fees except PPC will be paid on the 1<sup>st</sup> of each month in advance of the work being carried out by MTC and collected by Direct Debit.
- 11.6 PPC fees for the month previous will be due 10 days after the issue of the invoice and will be collected via Direct Debit.
- 11.7 The Charges and any other sums due hereunder are exclusive of value added tax which is payable by the Client in addition thereto.
- 11.8 Where a Client fails to make payment of the Charges in the due date, we shall be entitled, without limiting any other right we may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 5% above the base rate from time to time of Royal Bank Of Scotland PLC from the due date until the outstanding amount is paid.
- 11.9 The Client acknowledges that Services are provided using facilities provided to Us by third parties. We shall have the right, subject to fourteen (14) days prior written notice to the Client, to increase Our Charges at any time during the Minimum Contract Term or the Contract Period, whether to reflect increase costs to Us from such third parties or otherwise. Where such increase exceeds 10% of the Charge in question prior to such notice the Client shall be entitled to terminate the Contract by written notice to Us given by the Client within 7 days after service of our notice of increase to the Client. If the Client terminates under this Clause 11.5, the Client will remain liable for all Charges (at the previous rate) up to the date the Contract ends.
- 11.10 Without prejudice to our other rights and remedies under the Conditions, if any sum payable is not paid on or before the due date, We shall be entitled forthwith to suspend the provision of Services to the Client;

## **12 DEFAULT**

### 12.1 Where the Client:

12.1.1. fails to pay the Charges in accordance with the provisions of Clause 11 of the Conditions; or

12.1.2 breaches the Contract in any other way; or

12.1.3 is subject to bankruptcy or insolvency proceedings;

We shall be entitled to (without prejudicing, losing or reducing any other right or remedy) suspend Services, including partially, temporarily without notice, during which the Client will remain liable to pay the Charges during the suspension, or terminate the Contract in accordance with Clause 13 of the Conditions.

12.2 Bankruptcy or insolvency proceeding means bankruptcy proceedings or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress, diligence or seizure: or if the Client is a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.

12.3 The Client will continue to be liable to pay any and all Charges which are due for Services during any period in which the Client does not comply with the Contract.

12.4 On suspension of the Services or termination of the Contract We shall be entitled to immediately withhold any domain name We may have registered on the Client's behalf; withhold access to any and all system, usernames, passwords and email addresses and data of all and any type relating to the Services; to block the Website and to remove all data located on it. We shall be entitled to delete all such data but may, at Our discretion, hold such data for such period as We may decide to allow the Client to collect it at the Client's expense, subject to payment in full of any amounts withstanding and payable to Us.

12.5 We shall be entitled to post such notice in respect of the non-availability of the Website as We think fit.

12.6 Where We waive a breach of the Contract by the Client, that waiver is limited to the particular breach only. Any delay by Us in acting upon a breach is not to be regarded in itself as a waiver.

## **13 TERMINATION**

13.1 The Contract may be terminated by either party on giving at least thirty (30) days notice to the other expiring on the last day of the Minimum Contract Term, the Term. Where written notice is given by Us, the Client shall pay all Charges up to the expiry of the notice. In the event that the Client gives notice, the Client shall pay all Charges until thirty (30) days after the date We receive the notice or until expiry of the notice, whichever is the later. The Client's notice does not avoid any other liability on the Client's part for Services already provided.

13.2 We shall be entitled to terminate the Contract or suspend the Hosting Services immediately on giving written notice to the Client if the Client does anything or allows anything to be done which affects the performance or availability of the Hosting Services or any network to which the Client is connected or if the Client is in material breach of any of its obligations hereunder and has no remedied such breach within thirty (30) days of written notice specifying the breach.

13.3 Following termination of the Contract for any reason:

- 13.3.1 each party will on request by the other return or supply to the other all documents, discs and other material in its possession containing any Confidential Information or Intellectual Property Rights of the other;
- 13.3.2 subject to Clause 12, each party will immediately cease using the other party's Intellectual Property Rights including the other party's trade marks.
- 13.4 Termination of this Agreement for any reason shall not bring to an end:
  - 13.4.1 Clauses 11, 12, 14, 15, 16, 17, 18 and 22 of this Agreement;
  - 13.4.2 the Client's obligations to pay Charges and/or other sums due to Us hereunder.

## **14 LIABILITY**

- 14.1 We shall provide the Services in good faith, however, due to the nature of the Services, We do not warrant that the Services shall be uninterrupted or error free and no warranty, either express or implied, is given in relation to the Services.
- 14.2 The Client acknowledges that We have no control over the information transmitted by the Client via the Service and that We do not examine the use to which the Client puts the Service or the nature of the information the Client sends or receives. We hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.
- 14.3 We do not accept any liability whatsoever for the acts or omissions of other providers of telecommunication service or for faults in or failures of their apparatus.
- 14.4 With respect to the Hosting Services, We do not accept any liability for any third party acts or omissions or any delay or failure to meet obligations under the Contract that result from delay or failure on the part of a third party supplier. In the event that We are unable to supply the Hosting Services to the Client due to any failure on the part of any third party supplier, then We shall be entitled to a period of 14 days in which to find an alternative third party supplier. Where We are unable to find an alternative third party supplier, either party shall be entitled to terminate the Contract without liability on giving written notice to the other.
- 14.5 Our liability shall not in any event include loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or total consequential loss whatsoever.
- 14.6 We make no warranty as regards to Our Services or Server and will not be responsible for any damage allegedly suffered or claimed by the Client for any reason including but not limited to loss of data, wrong or non deliveries and service interruptions.
- 14.7 All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded.
- 14.8 Nothing in these Conditions shall exclude our liability for death or personal injury resulting from our negligence;
- 14.9 Our total aggregate liability to the Client for any claim in contract, delict, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the Charges paid by the Client in respect of the Services which are the subject of any such claim;
- 14.10 Our liability in respect to losses to the Client shall not exceed £10,000;
- 14.11 In any event no claim shall be brought unless the Client has notified Us of the claim within three months of it arising;

## **15 INDEMNITY**

The Client hereby agrees to indemnify and keep indemnified Us, Our employees, officers, agents and contractors and hold Us, Our employees, officers, agents and contractors from and against any breach or non-observance by the Client of these Conditions and any claim brought against Us by a third party resulting from the provision of Services by Us to the Client, the Client's use of the Services and the Server and the Client's Materials placed on the Website including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by Us as a consequence of such breach or non-observance.

## **16 INTELLECTUAL PROPERTY RIGHTS**

- 16.1 All Intellectual Property Rights in pre-existing scripts, objects, routines, sub routines, programme utilities, file structures, coding and other materials provided by and/or used by Us in supplying the Services will remain Our property.
- 16.2 Any and all Intellectual Property Rights arising from the creation by Us of the Project (including design, graphics and content software) and any and all Intellectual Property Rights in and to the Source Code shall belong to Us.
- 16.3 We shall upon receipt from the Client of all Charges:-
  - 16.3.1 in respect of all Intellectual Property Rights relating to any bespoke design, graphics and content generated by Us solely and directly from the provision of the Services, grant to the Client an exclusive, worldwide, royalty-free, non-transferable licence to use such Intellectual Property Rights in connection with the use of the Services;
  - 16.3.2 in respect of all Intellectual Property Rights in the software code or other parts of the Services, including but not limited to the Hosting Services (subject to receipt of the Hosting Fee) and the Website which are generic (including for the avoidance of doubt all Source Code driving the Website), grant to the Client a non-exclusive, worldwide, royalty-free, non-transferable licence to such Intellectual Property Rights used for the purposes of edit, amendment and upload in connection with the use of the Website; and
  - 16.3.3 In the event that the Contract and/or Services are terminated for any reason, the Client's licence granted under Clauses 16.3.1 and 16.3.2 shall also be terminated.
- 16.4 The Client shall upon agreement of the Contract grant Us a non-exclusive, worldwide, royalty-free, non-transferable licence to use the Client's Materials in connection with the Services under the Contract.
- 16.5 The Client shall take full responsibility for and shall obtain any and all necessary consents and clearances to enable the Client lawfully to make use of all and any Intellectual Property Rights through the Services, including without limitation, clearance and/or consents in respect of the Client's proposed domain name(s) and in respect of the Content provided to Us for Services, including, where applicable, design of the Website.

## **17 COMPLAINTS**

- 17.1 Should you have any complaints about the services received from us, then you can contact us through our online client portal and submit a ticket detailing your issue. Please clearly state the product or service that you are experiencing an issue with and provide details of the nature of your complaint. A member of our team will aim to resolve your issue to the best of their abilities. All complaints will be acknowledged within 3 business days, and we aim to resolve any issues within 10 business days.

- 17.2 If you are unhappy with initial response, please email [complaints@mtcmedia.co.uk](mailto:complaints@mtcmedia.co.uk) where a senior member of management will pick up and respond within 3 business days and aim to resolve within 10 business days.

## **18 ASSIGNATION**

- 18.1 The Client may assign all or part of the Contract to any other party only with Our prior written agreement.
- 18.2 We reserve the right to assign all or part of the Contract at any time to any of Our subsidiary or associate companies.

## **19 FORCE MAJEURE**

We are not liable for any breach of the Contract or liable for any delay or failure in performance of any part of these conditions and its commitments when arising from or attributable to acts, events, omissions, accidents beyond the reasonable control of Us to perform and without limiting the generality thereof, shall include strikes; lock outs or other industrial action; civil commotion; riot; invasion; war; threat or preparation for war; fire; explosion; storm; flood; earthquake; subsidence; epidemic or other natural physical disaster, the possibility of the railways, shipping, aircraft, motor transport or other means of public or private transport, political interference with Our normal operations.

## **20 NOTICES**

Any notices required to be given under the Contract by either party to the other shall be in writing, whether by letter sent recorded delivery, fax or email to the address of the other party as given in this Contract or the Action Plan or such other address as such party may from time to time have communicated to the other in writing. Any notice server by email shall, unless the contrary is proved, be deemed to be received on the day it was sent. Any fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

## **21 HEADINGS**

Headings are included in the Conditions are for convenience only and shall not affect the construction or interpretation of the Conditions.

## **22 ENTIRE AGREEMENT**

The Contract represents the entire understanding between the Client and Us relating to the Services. The Contract supersedes all previous communications between the Client and Us (whether written or oral) relating to the Services. Nothing in the Contract removes or overrides any right of action by any party in respect of fraudulent misrepresentation, fraudulent concealment or other fraudulent actions.

## **23 LAW**

The Contract shall be governed by and construed in accordance with Scots law and the Client hereby submits to the exclusive jurisdiction of the Scottish courts.

SIGNED for and on behalf of  
MTC Media Ltd

SIGNED for and on behalf of

Name: David Rankine

Name:

Title: Business Development Director

Title:

Date:

Date: