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## Terms and Conditions of business

### Dual Media Ltd (2011)

**1. Acceptance.** A copy of these terms and conditions must be signed by all customers, in advance of, or during the time of submission of work agreement with Dual Media Ltd, indicating agreement to and acceptance of these Terms and Conditions. Alternatively, payment of an advance fee is an acceptance of our terms and conditions.

**2. Charges.** Charges for services to be provided by Dual Media Ltd are defined in the project quotation that the Customer receives via e-mail or in writing. Quotations are valid for a period of 30 days. Dual Media Ltd reserves the right to alter or decline to provide a quotation after expiry of the 30 days.

(a) All services require an advance payment of a minimum of fifty percent (50%) of the project quotation prior to commencement.

(b) The remaining fifty percent (50%) of each project is due upon completion of the project; payment is required before any product/imagery is released to the client 14 days after project completion.

All payments will be received by Dual Media prior to upload of projects to the server or release of materials. Charges for web design work does not cover the release of source .PSD or .FLA files; if the Customer requires these items then a small administration charge will apply.

**The preferred payment method is via direct electronic deposit to our nominated bank account.** Alternatively cheques should be made payable to Dual Media Ltd and sent to: Dual Media, Unit 13, Evans Business Centre, Amy Johnson Way, Blackpool, FY4 2RF.

**3. Customer Review.** Dual Media Ltd will provide the Customer with an opportunity to review the appearance and content of web solutions, relevant documentation and copywriting and artwork during the design phase once they are completed. At the completion of the project, such materials will be deemed to be accepted and approved unless the Customer notifies Dual Media Ltd otherwise within ten (10) days of the date the materials are made available to the Customer.

**4. Turnaround Time and Content Control.** Dual Media Ltd will install and publicly post or supply the Customer's Web site by the date specified in the project proposal, or if no such date is specified, within four weeks of the date initial payment is received from the Customer, unless a delay is specifically requested /caused by the Customer, and agreed by Dual Media Ltd.

In return, the Customer agrees to delegate a single individual as 'first-point-of-call' to aid Dual Media Ltd with completing the commission in a satisfactory and expedient manner.

During the project, Dual Media Ltd will require the Customer to provide copy (in electronic format) and images. If content is not provided within four (4) weeks of an official request by email then Dual Media Ltd reserves the right to advise the Customer of a revision to the final payment fee based on new or revised pricing schedules that may be introduced from time to time. If content is not provided within eight (8) weeks from the original email request then the Customer is considered to be in default of the commission, the project will be terminated and the Customer sent the final invoice for immediate payment. Dual Media Ltd will agree, at its discretion, to re-commence the commission after agreement is reached on a new quotation document and once the original fees have been paid.

**5. Payment.** Dual Media Ltd will provide invoices upon completion of the work for Web Design and any associated services. Invoices are normally sent via email. Invoices are due upon receipt. Accounts that remain unpaid thirty (30) days after the date of the invoice will be assessed a service charge in the amount of the higher of one and one-half percent (2.5%) or £25 per week of the total amount due.

**6. Default.** Accounts unpaid thirty (30) days after the date of invoice will be considered in default. If the Customer in default maintains any information or files on Dual Media Ltd's Web space, Dual Media Ltd will, at its discretion, remove all such material from its web space. Dual Media Ltd is not responsible for any loss of data and business incurred due to the removal of the service. Removal of such material does not relieve the Customer of the obligation to pay any outstanding charges assessed to the Customer's account. Cheques returned for insufficient funds will be assessed a return charge of £25 and the Customer's account will immediately be considered to be in default until full payment is received. Customers with accounts in default agree to pay Dual Media Ltd reasonable expenses, including legal fees and costs for collection by third-party agencies, incurred by Dual Media Ltd in enforcing these Terms and Conditions.

**7. Termination.** Termination of services by the Customer must be requested in a written notice and will be effective on receipt of such notice. E-mail or telephone requests for termination of services will not be honoured until and unless confirmed in writing. The Customer will be invoiced for all work completed to the date of first notice of cancellation for payment in full within thirty (30) days.

8. **Copyright.** The Customer retains the copyright to data, files and graphic logos provided by the Customer, and grant Dual Media Ltd the rights to publish and use such material. The Customer must obtain permission and rights to use any information or files that are copyrighted by a third party. The Customer is further responsible for granting Dual Media Ltd permission and rights for use of the same and agrees to indemnify and hold harmless Dual Media Ltd from any and all claims resulting from the Customer's negligence or inability to obtain proper copyright permissions. A contract for Web site design and/or placement shall be regarded as a guarantee by the Customer to Dual Media Ltd that all such permissions and authorities have been obtained. Evidence of permissions and authorities may be requested.

9. **Standard Media Delivery.** Unless otherwise specified in the project quotation, this Agreement assumes that any text will be provided by the Customer in electronic format (ASCII text files delivered on floppy disk or via e-mail or FTP) and that all photographs and other graphics will be provided physically in high quality print suitable for scanning or electronically in .gif, .jpeg, .png or .tiff format. Although every reasonable attempt shall be made by Dual Media Ltd to return to the Customer any images or printed material provided for use in creation of the Customer's Web site, such return cannot be guaranteed.

10. **Design Credit.** A link to Dual Media Ltd will appear in either small type or by a small graphic at the bottom of the Customer's Web site. If a graphic is used, it will be designed to fit in with the overall site design. The Customer agrees to allow Dual Media to reference projects completed on behalf of the customer within Dual Media's portfolio. ([www.dualmedia.co.uk](http://www.dualmedia.co.uk))

11. **Access Requirements.** If the Customer's Web site is to be installed on a third-party server, Dual Media Ltd must granted temporary read/write access to the Customer's storage directories, and those directories must be accessible via FTP. Depending on the specific nature of the project, other resources might also need to be configured on the server.

12. **Post-Placement Alterations.** Dual Media Ltd cannot accept responsibility for any alterations caused by a third part occurring to the Customer's pages once installed. Such alterations include, but are not limited to additions, modifications or deletions.

13. **Domain Names.** Dual Media Ltd may purchase domain names on behalf of the Customer. Payment and renewal of those domain names is the responsibility of the Customer. The loss, cancellation or otherwise of the domain brought about by none or late payment is not the responsibility of Dual Media Ltd. The Customer should keep a record of the due dates for payment to ensure that payment is received in good time.

Dual Media Ltd shall not be liable for any loss, claim, lost revenue, or otherwise be accountable, should we be unable to process the requested domain name. Should we be unable to process a domain name registration request we will either provide a refund or provide an alternative domain name.

Dual Media Ltd shall accept no responsibility for the loss of domain name(s) due to the customer's failure to respond to our notification of renewal or failure to pay invoices for renew.

Dual Media Ltd reserves the right to withhold or prevent the release of domain name(s) should the client default on their account. All services remain under the control of Dual Media Ltd until the account is paid in full.

14. **General.** These Terms and Conditions supersede all previous representations, understandings or agreements. The Customer's signature below or payment of an advance fee constitutes agreement to and acceptance of these Terms and Conditions. Payment online is also an acceptance of our terms and conditions. (Available online at [www.dualmedia.co.uk](http://www.dualmedia.co.uk)).

15. **Governing Law.** This Agreement shall be governed by English Law. Dual Media Ltd provides World Wide Web page hosting.

16. **Server Use.** Server accounts are to be used by the primary owner only. Account holders are not permitted to resell, store or give away web-hosting services of their website to other parties. Web hosting services are defined as allowing a separate, third party to host content on the owner's web site. Exceptions to this include ad banners, classified ads, and personal ads.

Dual Media Ltd reserves the right to refuse service and / or access to its servers to anyone. Dual Media Ltd does not allow any of the following content to be stored on its servers:

(a) **Illegal Material** - This includes copyrighted works, commercial audio, video, or music files, and any material in violation of any Federal, State or Local regulation.

(b) **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 Dual Media Ltd.

(c) Warez - Includes pirated software, ROMS, emulators, phreaking, hacking, and password cracking. IP spoofing, etc., and encrypting of any of the above. Also includes any sites which provide "links to" or "how to" information about such material.

Dual Media Ltd reserves the right to suspend or cancel a customer's access to any or all services provided by Dual Media Ltd when Dual Media Ltd decides that the account has been inappropriately used or otherwise.

**17. Unlimited Use Policy.** High bandwidth usage: Dual Media Ltd offers a high use policy by maintaining very large ratios of bandwidth per customer. In rare cases, Dual Media Ltd may find a customer to be using server resources to such an extent that he or she may jeopardize server performance and resources for other customers. In such instances, Dual Media Ltd reserves the right to impose the High Resource User Policy for the consideration of all customers.

**18. High Resource User Policy.** Resources are defined as bandwidth and/or processor utilization. Dual Media Ltd may implement the following policy to its sole discretion:

When a website is found to be monopolising the resources available, Dual Media Ltd reserves the right to suspend that site immediately. This policy is only implemented in extreme circumstances and is intended to prevent the misuse of our servers. Customers may be offered an option whereby Dual Media Ltd continues hosting the website for an additional fee.

**19. Data Backup.** The customer is responsible for undertaking any data backup programs, database, web files or other digital material.

Dual Media offer a data backup service details of which and costs are available on request.

**20. Spam Guidelines.** Unsolicited email (spam) is considered an unacceptable use of a domain. Whether the unsolicited email originates directly from the clients web space area or otherwise, abuse reports received concerning a domain may result in suspension or closure of the service without refund.

**21. Payment Polices.** All accounts are set up on a prepay basis. Although Dual Media Ltd reserves the right to change prices of accounts or services at any time all pricing is guaranteed for the period of prepayment. Payment is due each anniversary year following the date the account was established.

All renewal payments must be received at least 5 working days in advance of the renewal date to ensure that no disruption to the service is incurred. Dual Media Ltd reserves the right to suspend this and other services until any outstanding debt is cleared. Dual Media Ltd will not be responsible for any data lost due to non-payment closure of an account. The customer is responsible for all money owed on the account from the time it was established to the time that the customer sends a written cancellation request.

Reinstatement of an account is at Dual Media Ltd's discretion. Dual Media Ltd reserves the right to charge a reinstatement fee of 100 (one hundred) pounds (excluding VAT) per account.

**22. Cancellation and Refunds.** Fees charged on a prepay /deposit basis are non-refundable.

**23. Indemnification.** Customer agrees that it shall defend, indemnify, save and hold Dual Media Ltd harmless from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees asserted against Dual Media Ltd, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold harmless Dual Media Ltd against liabilities arising out of;

- (a) Any injury to person or property caused by any products sold or otherwise distributed in connection with Dual Media Ltd's server;
- (b) Any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party;
- (c) Copyright infringement and
- (d) Any defective products sold to customer from Dual Media Ltd's server.

Dual Media Ltd cannot guarantee and do not accept responsibility for lost email, online orders, bookings, and so forth from their web site.

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**24. Intellectual Property Rights**

- 24.1 You shall obtain any and all necessary consents and clearances to enable you lawfully to make uses of all and any intellectual property rights through the Services, including without limitation, clearance and/or consents in respect of your proposed domain name.
- 24.2 The copyright in any design, together with any other intellectual property rights arising out of any work executed by Dual media, shall vest in Dual Media, until such time as Dual Media has been paid in full for all of the services which the parties have agreed Dual media will provide. Upon full payment being made, all intellectual property rights shall be assigned to the Client by Dual Media and the client shall be free to register any such rights at its costs with the exception of any product or service supplied under licence.
- 24.3 Dual Media's website relies on technology developed by Dual Media. By contracting with Dual Media you are in effect buying a licence to this software and to the plug-in features they you have chosen to purchase. The intellectual property off all the 'server side code' remains that of Dual Media. However Dual Media grants to you a non-exclusive licence to access Dual Media's content management system (Dual CMS) and related code on a single domain from the Dual Media website, for your internal use, to administrator the content of one internet domain, subject to the terms and conditions of this Agreement. If you have purchased a licence for more than one Internet domain (i.e. for three domains), you may use the Software for the number of domains licensed.
- 24.4 You are permitted to adapt and modify those portions of the Software that are provided to you in source code format (your templates), to enable you to achieve interoperability of the Software with your internet domain to create customised interfaces as part of further development of your site
- 24.5 Any attempt to circumvent access controls of Dual Media content management system (Dual CMS) is deemed supporting material breach of this Agreement, resulting in automatic termination of your right to use this software.
- 24.6 Should Dual Media release any updates, upgrades or new versions of the Software or supplemental code or supporting materials for the Software (\*Additional Software Release\*), all such Additional Software releases shall be considered part of the Software and subject to the terms and conditions of this Agreement and any additional terms and conditions that accompany the Additional Software Releases.
- 24.7 You are not permitted, and may not: translate, reverse engineer or disassemble the Software or any part of the Software which is provided to you, except to the extent this restriction is not permitted by the laws of your jurisdiction; or modify or adapt or create derivative works based on the Software or any part of the Software (except as permitted under the "Licence" provision above), or merge the Software or any part of the Software with any other software program; or separate the components parts of the Software for use in more than one computer or server. You may not provide the source code for the Software or any Improvements to any party (including your customers)
- 24.8 The websites using Dual Media's content management system need to be hosted on our web servers that have been specifically set up for this task. In order to protect our copyright over the server side code we reserve the right to only offer our editing system as a "Hosted Solution"

**25. Disclaimer.** Dual Media Ltd will not be responsible for any damages your business may suffer. Dual Media Ltd makes no warranties of any kind, expressed or implied for services we provide. Dual Media Ltd disclaims any warranty or merchantability or fitness for a particular purpose. The includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Dual Media Ltd and its employees. Dual Media Ltd reserves the right to revise its policies at any time.

**26. Non Disclosure.** The undersigned reader acknowledges that the information provided by Dual Media Ltd in this proposal is confidential; therefore, the reader agrees not to disclose it without the express written permission of Dual Media Ltd (Mr Andrew Brown) It is acknowledged by reader that information is in all respects confidential in nature, other than information which is in the public domain through other means and that any disclosure or use of same by the reader may cause serious harm or damage to Dual Media Ltd. Upon request, this document is to be immediately returned to Dual Media Ltd.

**Declaration & Acceptance**

I have read and understand the above terms and conditions. I confirm that I am the person named on this form below and I am authorised to enter into an agreement with Dual Media Ltd. and the company outlined below.

**Signed on behalf of (Business / Company Name):**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name:

Position:

**Signed on behalf of Dual Media Ltd.**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: Mr Andrew Brown

Title: Managing Director