

# Standard Terms & Conditions

Digital M3dia (furthermore referred to as "DM3"), is a provider of internet and design related services including website design, company branding and marketing, printing services and graphic design. These Conditions set out the terms under which DM3 will provide Services to the Client (as such terms are defined below). These Conditions should be read and accepted before any work is contractually requested or proposed for. These Conditions will be supplemented from time to time by order confirmation forms setting out specific details relating to services requested by the Client and, as so supplemented, will apply to the exclusion of any other terms and conditions including any which the Client may attempt to introduce. Digital M3dia reserves the right to change, add, subtract or in way alter these Conditions without the prior consent of the Client.

By written or verbal acceptance of contractual work with Digital M3dia (DM3) you are deemed to have accepted these terms and conditions.

## 1. SERVICES

- a. Performance. Digital M3dia agrees to provide the professional services set forth in any work proposed for. The daily figures are estimates only and may change based on a continual review of the service requirements during the term of the Agreement. In the event that Digital M3dia determines that the daily requirements stated in this a proposal will be insufficient, Digital M3dia shall notify the Customer and any additional work shall not be performed until written authorisation has been granted by the Customer.
- b. Acceptance. Upon final completion of the services set forth in any proposal. Customer shall have thirty (30) days in which to notify Digital M3dia of any problems with the services provided or with the specifications developed during the term of the Agreement and provided to Customer in documentary form. If Digital M3dia is not notified of any problems within this time period, the services performed shall be deemed accepted.

## 2. COMPENSATION & PAYMENT TERMS

- a. Invoices. Digital M3dia will invoice Customer 50% upfront and 50% on completion with payments being due seven (14) days after receipt of invoice. Payments not received when due shall accrue interest at a rate of two percent (2%) per month.

## 3. TERM

- a. The term of the Agreement shall begin on the date that it is signed by both parties and continue until the services are completed. However, Customer may terminate this Agreement at any time upon ten (10) days prior written notice. In the event of termination under this clause, Customer shall pay Digital M3dia the amounts specified in Cost Section relating to work performed by Digital M3dia prior to the date of termination. Additionally, all property of each party in possession of the other party shall be returned.

## 4. CUSTOMER OBLIGATIONS

- a. Co-operation. Customer agrees that it will co-operate with and assist Digital M3dia in the performance of the services requested pursuant to this Agreement and will provide the resources necessary for Digital M3dia performance hereunder as specified in the Work Order.
- b. Customer Liaison. Customer will make available to Digital M3dia at least one qualified Customer staff member who will have authority to act on behalf of Customer, provide information and data concerning Customer's operations and activities, advise Digital M3dia of Customer's requirements and provide access to Customer's facilities at all reasonable times during the performance of the services required pursuant to this Agreement.

## 5. INTELLECTUAL PROPERTY

a. License. Digital M3dia grants to Customer, and Customer purchases, subject to the following terms and conditions, a non-exclusive, non-transferable, worldwide and irrevocable license under copyright to use, execute, perform, reproduce, display and distribute copies internally of the software developed by Digital M3dia and delivered to Customer pursuant to this Agreement. The foregoing license includes the right to grant corresponding rights to Customer's majority-owned subsidiaries. In the event of the customer being taken over the license will automatically be transferred to the new owner, subject to the new owner agreeing to be bound by the terms and conditions of this contract.

b. Ownership. THIS AGREEMENT IS NOT A WORK-FOR-HIRE AGREEMENT. Digital M3dia retains on an exclusive basis, except as specified in this Section, for itself all right, title and interest in and to any intellectual property developed by Digital M3dia in the performance of this Agreement. The website and all copyright pertaining to the site, having been designed for, and at the expense of the customer will be the sole property of the customer at all times.

c. Protection of Software. Customer agrees to take all reasonable steps to protect any software developed under this Agreement and any documentation related to the software from unauthorised copying or use. Source code of the software shall be deemed to include trade secrets of Digital M3dia and/or its licensors. The source code and embodied trade secrets any not be licensed to Customer. If source code is not provided to Customer, Customer agrees not to disassemble or decompile the software in order to discover the trade secrets contained in the source code.

d. Copies and Adaptations. Except as otherwise provided in this Agreement, Customers may not make or authorise the making of copies or adaptations of any software provided by Digital M3dia except as an essential step in the utilisation of the software, or for archival purposes to backup use of the software. All proprietary rights notices must be faithfully reproduced and included on all copies and adaptations.

e. Restrictions. Except as expressly authorised in this Agreement, Customer agrees not to rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify or time share any software provided by Digital M3dia in performance of this Agreement or any related documentation.

## 6. WARRANTY

a. Digital M3dia warrants that the services to be performed shall be done in a professional and workmanlike manner and according to industry standards. Specifically, based on the information provided to Digital M3dia by Customer, Digital M3dia warrants that for a period of 365 days following the date of completion and acceptance of the services set forth herein, Customer's system shall perform pursuant to the representations set forth in this Work Order and according to the specifications that will be developed throughout the term of this Agreement. In the event that, during the warranty period, Customer's system does not perform according to the above referenced representations and specifications, and, provided that Customer notifies Digital M3dia of such failure to perform during the warranty period, Digital M3dia agrees to take those actions necessary to correct such performance deficiency. This warranty specifically excludes non-performance issues caused as a result of a non-Digital M3dia hardware malfunction, software not developed by Digital M3dia or by incorrect data or incorrect procedures used or provided by Customer or a third party, Customer agrees to reimburse Digital M3dia for time and materials for any services provided by Digital M3dia at Customer's request to remedy excluded non-performance problems. This warranty shall immediately cease if Customer or any third party modifies any portion of the system which is the subject of the services being performed pursuant to this Agreement.

b. Digital M3dia warrant that the software supplied to the customer will perform substantially according to the specification laid out in the proposal. Digital M3dia warrant that they own, or are licensed, to grant the rights being granted and that any software or other material being offered and/or used does not infringe any third party rights.

## 7. LIABILITY

DIGITAL M3DIA SHALL IN NO EVENT BE LIABLE FOR LOSS OF PROFITS, GOOD WILL OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES SUFFERED BY CUSTOMER OR OTHERS, AS A RESULT OF DIGITAL M3DIA PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES WAS DISCLOSED TO DIGITAL M3DIA OR COULD HAVE BEEN REASONABLY FORESEEN BY DIGITAL M3DIA. DIGITAL M3DIA LIABILITY ON ANY CLAIM FOR DAMAGES ARISING OUT OF THIS

AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNT WHICH HAS BEEN PAID TO DIGITAL M3DIA BY CUSTOMER FOR DIGITAL M3DIA PERFORMANCE HEREUNDER.

## 8. DEFAULT/TERMINATION

a. Failure by either party to comply with any term or condition under this Agreement shall entitle the other party to give the defaulting party written notice requiring it to cure the default. If the party in default has not cured, or commenced to cure, if a cure cannot be performed within the time period set forth below, the default within 7 days after receipt of written notice, the notifying party shall be entitled, in addition to any other rights it may have under this Agreement or otherwise at law or in equity, to immediately terminate this Agreement.

## 9. PROPRIETARY/CONFIDENTIAL INFORMATION

Digital M3dia and Customer acknowledge that proprietary and confidential information may be disclosed to each other throughout the term of this Agreement. Each party agrees that it will be bound to treat the proprietary or confidential information of the other party as it would its own confidential or proprietary information and, specifically, not to disclose the information to any third party except:

- a. Information which at the time of disclosure is in the public domain;
- b. Information which, at the time of disclosure is published or otherwise becomes part of the public domain through no fault of the party claiming that the information is not proprietary/confidential.
- c. Information which the party claiming that the information is not proprietary/confidential can show was in its possession at the time of disclosure and was not subject to any restriction of confidentiality.
- d. Information which the party claiming that the information is not proprietary/confidential can show was received by it after the time of disclosure hereunder from the third party who did not require the party claiming that the information is not proprietary/confidential to hold it in confidence and who had a legal right to make such disclosure.

## 10. SOLICITATION OF EMPLOYMENT

Customer hereby agrees that it will not, unless agreed to in writing by Digital M3dia, solicit the services of Digital M3dia consultants providing services under this Agreement during the term of this Agreement and for one year after the last services are provided under this Agreement. If such action occurs and results in a Digital M3dia consultant accepting employment with the Customer, Customer hereby agrees to pay to Digital M3dia, as liquidated damages that individual's Digital M3dia 20 days fees to offset such recruiting and training costs.

## 11. GENERAL PROVISIONS

a. Force Majeure. If either party shall be prevented from performing any portion of this Agreement (except the payment of money) by causes beyond its control, including labour disputes, civil commotion, war, governmental regulations or controls, casualty, inability to obtain materials or services or acts of God, such defaulting party shall be excused from performance for the period of the delay and for a reasonable time thereafter.

b. Jurisdiction. This Agreement and any claim, action, suit, proceeding or dispute arising out of the Agreement shall in all respects be governed by, and interpreted in accordance with the substantive laws of England. Venue for any actions arising under this Agreement shall vest exclusively in the courts of general jurisdiction of England.

c. Survivor of Terms. The provisions of this Agreement which by their nature extend beyond the termination of the Agreement will survive and remain in effect until all obligations are satisfied.

d. Waiver. No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

e. Integration. This Agreement, including all referenced exhibits, schedules or documents, sets forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or

representations with respect to the subject matter other than as expressly provided in this Agreement.

f. Superior Agreement. The Agreement shall not be supplemented or modified by any course of dealing or trade usage. Variance from or addition to the terms and conditions of the Agreement in any purchase order or other written notification from Customer will be of no effect, unless otherwise expressly provided in the Agreement or agreed to in writing by both parties.

g. Assignment. The Agreement is not assignable by the Customer, in whole or in part, without Digital M3dia prior written consent (which shall not be unreasonably withheld), save to the purchaser of the customer's business and/or assets. Notwithstanding, Digital M3dia shall not unreasonably withhold consent to an assignment of the Agreement or any part of the Agreement to a parent, subsidiary or affiliate.

h. Notice. Unless otherwise agreed to by the parties, all notices required under the Agreement shall be deemed effective when received and made in writing by either (i) registered mail, (ii) certified mail, return receipt requested, or (iii) overnight mail, addressed and sent to the address first above written and to the attention of the party executing the Agreement or that person's successor, or (iv) by telephone facsimile transfer appropriately directed to the attention of the party executing the Agreement or that person's successor.

i. Severability. If any provision of the Agreement is held invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.