

Terms and conditions of service by Lightmaker

In agreeing to the provision of any and all services from Lightmaker, The Client is deemed to have read and understood these terms and conditions.

1 Provision of Service

- 1.1 The Contract between Lightmaker and The Client incorporates these Terms and Conditions and covers the provision of service by Lightmaker to The Client.
- 1.2 Any date proposed either by The Client or Lightmaker for the provision of services shall be treated as an estimate only and shall be subject to any delay caused by the acts or omissions of any third Party over which the parties have no control. If either Party becomes aware of the possibility of any delay they shall immediately inform the other Party and each shall take any reasonable steps as appropriate required to prevent such delay.
- 1.3 Lightmaker reserve the right to alter or amend these terms and conditions at any time by giving notification of any amendment. Notification will be deemed to have been given by displaying the date of the last amendment to these Terms and Conditions at the foot of this document.

2 Definition and application

2.1 In these Terms and Conditions:

"Client" - means The Client with whom Lightmaker makes the Contract including a person reasonably appearing to Lightmaker to act with that Client's authority;

"Client Material" – means the proprietary material provided by The Client (including, but not limited to, images, artwork, documentation, video footage and audio files) to Lightmaker in order for Lightmaker to fulfil it's obligations under this Contract;

"CMS" - means the Content Management System application, which is used by The Client to edit, upload and delete material from the Website;

"Confidential Information" - means any and all information of any kind whatsoever disclosed by either Party to the other prior to, or after the date of, this Contract in whatever form including, but not limited to, oral, written, electronic, graphic or electromagnetic form (and including without limitation any notes, information or analyses derived from such information however it is produced) and which may reasonably be considered as confidential information of the Party that discloses it;

"Contract" - means the contract for the provision of service between The Client and Lightmaker that incorporates these terms and conditions;

"Deliverable" – means a document, report, software, or other tangible work or design asset that forms part of the Services to be provided by Lightmaker;

"Domain " - means an Internet address, which has been registered with a reputable domain registrar on behalf of The Client;

"Hosting" - means the making available of The Client's Website on the World Wide Web;

"Illegal" - means any act or acts, which are capable of breaching the criminal law of the Jurisdiction;

"Look and Feel" - means the style, navigation, or design characteristics of the Website as identified by a reasonable man;

"Production Files" – means the files with the extension .dir, .fla, .png, .edf, .ai, .asp, .js, .ppj, .aef, .swt, .eps, .psd, .mdf, .vbp, .dll, .bas, .asa, .cfm, .cfml, .aspx, .cls, .frm, .cab, .bat, .ocx, .sql, .mdb, .ssi, .txt, .frx, .vbw, .max, .p3d, .t3d, .3ds, .as, .cfc, .vsd, .vbproj, .sln, .vb, .resx, .user, .suo, .xml, .xsd and .exe;

"Quote or Quotation" – means the official quotation document provided to The Client for the provision of services by Lightmaker to The Client;

"Renewal Date" - means the date of renewal of the Contract between The Client and Lightmaker, as defined per the terms of the Contract;

"Server" – means the Server machine upon which the Website files reside which serves out information to users of the Website;

"Services" – means the services and deliverables that are to be provided by Lightmaker under this Contract;

"SLA" - means the Service Level Agreement to maintain Server uptime;

"Specifications" – means the specification of the Services as outlined in the Contract.

"Studio Day (Single)" – means one (1) day of Lightmaker studio time consisting of between one (1) and three (3) members of the Lightmaker production team working on the project at any one time;

"Studio Day (Double)" - means one (1) day of Lightmaker studio time consisting of between three (3) and six (6) members of the Lightmaker production team working on the project at any one time;

"Upload" - means the transfer of computer files to the Server for publication on the Internet and WWW;

"URL" - means Uniform Resource Locator which is a unique number associated with a name on the WWW i.e. <http://www.lightmaker.com> is the URL for Lightmaker;

"Website" - means the URL of The Client and/or the accompanying webspace allocation for this URL for The Client on Lightmaker's Server network;

"WWW" - means World Wide Web service available on the Internet;

2.2 Any words in the singular include the plural and vice versa. Any words denoting the masculine shall include the feminine or neuter and vice versa. All definitions, notes, terms and conditions referred to in these Terms and Conditions of Service form part of the Contract as if they were expressly set out in it.

2.3 Lightmaker and The Client are together referred to in these Terms and Conditions of Service as "the Parties" and individually as a "Party".

2.4 The clause headings are for the purpose of reference only and do not form part of the Contract nor do they affect the validity or enforceability of this Contract.

3 Lightmaker's Responsibilities

3.1 Lightmaker shall provide the Services on the terms and conditions set out in this Contract and in accordance with the specifications laid out therein.

3.2 Lightmaker shall:

3.2.1 Apply all necessary skill and expertise in the performance of the Services;

3.2.2 Provide the Services in a timely and efficient manner and to a professional standard which is not less in any respect to the standards generally observed in the industry for similar services;

3.2.3 Comply with The Client's quality and other standards as directed by The Client;

3.2.4 Provide the personal computing facilities necessary to complete its obligations under this contract;

3.2.5 Maintain an accurate record of periods worked for The Client under this Contract and to provide to The Client, on their request, written reports detailing work provided and the time taken to do so;

3.2.6 Notify The Client as far as possible in advance of any periods during which its personnel are or will be unable to provide the Services outlined in this Contract due to holiday, sickness or third Party commitments. The Client's consent to holiday absences is not required but Lightmaker will take into account The Client's requirements when approving absences;

3.3 Lightmaker's method of working shall be at its own discretion but it will be directed in the overall provision of the

Services by The Client and will comply with all reasonable directions given by The Client.

4 The Client's Responsibilities

- 4.1 The Client shall evaluate the Deliverable that Lightmaker delivers to The Client to verify that each conforms to the Specifications.
- 4.2 Once The Client has completed its evaluation of the each of the Deliverables, The Client shall notify Lightmaker as to whether or not it considers the Deliverable to conform to the Specifications and if it does not, of the ways in which it does not conform. If The Client notifies Lightmaker that it considers that the deliverable conforms to the Specification then The Client shall have accepted that Deliverable.
- 4.3 If The Client notifies Lightmaker that it considers that any deliverable does not conform to the Specifications, then Lightmaker shall modify that Deliverable so that it does conform to the Specifications and such modifications shall be included in the revised Deliverable to The Client. Lightmaker shall not be entitled to charge The Client in respect of the reasonable time spent modifying a Deliverable under this subsection or in respect of any reasonable costs or expenses incurred by Lightmaker in modifying a Deliverable under this subsection.
- 4.4 The Client agrees that its acceptance of a Deliverable shall be final and any further modification required by Lightmaker post acceptance shall be considered out of scope works and Lightmaker shall be entitled to charge The Client for reasonable time spent modifying a deliverable or in respect of any reasonable costs or expenses incurred by Lightmaker in modifying a Deliverable under this subsection.
- 4.5 Following the provision of a Lightmaker CMS application it is The Client's obligation to ensure that they do not upload a virus which could infect a Lightmaker or third party Server. The Client must not knowingly or otherwise allow a virus to enter the Internet community by allowing Internet users to download files containing viruses from their Website.
- 4.6 It is The Client's obligation to ensure that any material being uploaded to The Client's Website, either by Lightmaker or by The Client directly is not in breach of copyright. Lightmaker accepts no responsibility for The Client's actions in either uploading material to any Lightmaker authorised webspace, or to any other webspace on any Server on the WWW.
- 4.7 The Client agrees not to upload any material, which would be considered to be contrary to public decency and morality. Lightmaker reserve the right to randomly inspect Websites and in the event that any unauthorised material has been uploaded to that Web site, Lightmaker reserve the right to inform the authorities and to terminate this Contract forthwith. Uploaded material would expressly include, but not be limited to, pornographic, barbaric and overtly tasteless material.
- 4.8 The Client agrees that it shall not cause or permit or in any way assist in any unauthorised publication, any dissemination of any defamatory material or any material which could be considered to be in breach of the criminal laws of the Jurisdiction.
- 4.9 The Client agrees to keep secure and confidential all login names and passwords provided by Lightmaker to The Client. In the event of The Client's login name and password being disclosed to an unauthorised person, The Client shall inform Lightmaker immediately so new login names and password can be issued. Lightmaker accept no responsibility for any liability arising from the aforementioned disclosure.
- 4.10 The Client agrees not to do any act or omission, the result of which would have the effect of bringing Lightmaker into disrepute.
- 4.11 The Client shall provide Lightmaker with the necessary content, materials, sign off and feedback information as appropriate to enable Lightmaker to perform its obligations within the timeframe laid out in the Contract. Lightmaker shall not be responsible for any failure or delay in performance of it's obligations under the Contract where the provision of the aforementioned material is not forthcoming. Furthermore, in the event of such failure or delay to provide said material, Lightmaker shall be entitled to invoice for any remaining monies, and/or studio time allocated, due under the terms of the Contract, as studio time is pre-booked in.
- 4.12 The Client agrees that during the term of the Contract and for a period of two (2) years immediately following the term of the Contract it shall not directly or indirectly, for itself or on behalf of any person, firm, partnership, corporation, entity or association, solicit or attempt to solicit any employee of Lightmaker so as to terminate his or her employment with Lightmaker.

5 Look and Feels

- 5.1 Lightmaker shall provide The Client with the number of Look and Feels as detailed in the Contract or Quote following receipt of a design or technical brief from The Client. Lightmaker shall modify one Look and Feel as directed by The Client.
- 5.2 Lightmaker shall be entitled to charge The Client for reasonable time spent developing additional Look and Feels other than those provided for in the Contract or Quote document, subject to written approval by The Client.

6 Warranties and Indemnities

- 6.1 Lightmaker represents, warrants and covenants that:
 - 6.1.1 The use of the Deliverables in accordance with the terms of the Contract shall not infringe any patent, trade mark, copyright, moral right, official secret, trade secret, or other proprietary intellectual property right of any third party;
 - 6.1.2 The Deliverables shall not be libellous, obscene, or blasphemous, and shall not violate any rights of privacy and/or publicity of any third party and the use of the Deliverables in accordance with the terms of the Contract shall not otherwise be unlawful or illegal;
 - 6.1.3 The Deliverables shall provide the facilities and the functions set out or referred to in the Contract;
 - 6.1.4 Any software included in the Deliverables and the Third Party Software (if any) shall not contain any fault, error or malfunction which adversely affects the operation of the software and in particular, (without limitation), shall:
 - (i) properly record and process data which comprises, includes or is referenced by any date on or after 1 January 2000 (where relevant); and
 - (ii) shall not contain a self-replicating computer program which is designed to cause or which is likely to cause damage to the user's files and/or annoyance to the user;
 - 6.1.5 Lightmaker has the full and exclusive right and power to; (i) enter into and perform the Lightmaker's obligations under the Contract; and (ii) assign to The Client (or such person or persons as Client may on a case by case basis nominate in writing prior to such assignment) the copyright and other intellectual property rights (including any neighbouring rights) in the Deliverables as laid out in this Contract;
 - 6.1.6 The licenses in respect of the Third Party Software (if any) shall not limit or restrict the use or exploitation of the Deliverables in accordance with the terms of this Contract;
 - 6.1.7 No instruction, advice, or information contained in the Deliverables shall be inaccurate, false, misleading, or otherwise injurious to the end user provided always that Lightmaker shall not be liable under this Clause 6.1.7 where a breach of this clause arises as a direct result of an inaccuracy in the content provided by The Client.
 - 6.1.8 The parties acknowledge that the copyright of any music in the Deliverables (if any) belongs to its owners. Lightmaker warrants that it has obtained the appropriate licenses from the owner of such music allowing inclusion of the music in the Deliverables; and
- 6.2 Lightmaker shall indemnify The Client against all claims, demands, costs, liabilities, losses (excluding any loss, either direct or indirect, of profits, business or anticipated savings or any other direct or indirect consequential loss), damages and expenses (including reasonable legal expenses) arising out of or in connection with any claim which, taking the claimant's allegations to be true, would result in a breach by Lightmaker of any of the representations, warranties or covenants set out in subsection 6.1
- 6.3 The Client shall indemnify Lightmaker against all claims, demands, costs, liabilities, losses, (excluding any loss, either direct or indirect, of profits, business or anticipated savings or any other direct or indirect consequential loss), damages and expenses (including reasonable legal expenses) arising out any act or omission carried out by Lightmaker pursuant to and strictly in accordance with the instructions of Client.

7 Limitation of Liability

- 7.1 For the avoidance of doubt, Lightmaker has no obligation duty or liability beyond that of a duty to exercise reasonable skill and care and in no event and under no circumstance shall Lightmaker be liable for any loss either direct or indirect of profits, business or anticipated savings or any other direct or indirect consequential loss arising from the provision of service.
- 7.2 Lightmaker Screensavers, CD-ROMs and all other material, have been checked thoroughly with virus checking programs and duplicated under strict quality controls. To the extent permitted by the law, Lightmaker, or its respective employees or agents, will not accept any responsibility for any damage caused in whatever way through the use or misuse of the aforementioned material.

7.3 None of the exclusions and limitations in this section shall apply in respect of liability in negligence causing personal injury or death or any other liability which cannot by law be excluded or limited.

8 Charges

8.1 Charges of in respect of services provided by Lightmaker to The Client will be payable as per the invoice terms.

8.2 Any additional fees have to be agreed by email, and/or in writing by authorised representatives of the parties before any new charges can be made.

8.3 Should Lightmaker have to issue legal proceedings owing to the non payment of invoices pursuant to the Contract, The Client accepts responsibility for all Lightmaker legal fees and disbursements notwithstanding the value of the claim, on an indemnity basis.

8.4 Any third party or additional costs that Lightmaker may incur due to processing late payment will be payable by The Client within seven days, following receipt of a valid invoice.

8.5 Studio Day (Single) book-in rates are currently set at \$2,500 per day not including expenses. For Lightmaker Agency pre-bookin rates please refer to your Contract or email adrian.barrett@lightmaker.com

8.6 Studio Day (Double) book-in rates are currently set at \$2,500 per day not including expenses. For Lightmaker Agency pre-bookin rates please refer to your Contract or email adrian.barrett@lightmaker.com

8.7 Strategic Agency Meeting Support, weekend studio book-ins, and Director level consultancy rates are currently set at \$3,000 per day not including expenses.

9 Termination of the Contract by Lightmaker

9.1 Lightmaker may terminate this Contract for default following a material breach by The Client of its obligations hereunder, provided that written notice shall offer to The Client a thirty (30) day period for remedial action. If after thirty (30) days, the cause of the default remains uncorrected, then Lightmaker may terminate this agreement by written notice to The Client.

9.2 Termination of the Contract by Lightmaker will result in the retaining by Lightmaker of all monies received from The Client who will not be entitled to a refund of monies paid.

9.3 Upon termination of the Contract by Lightmaker, The Client shall pay a sum (by way of agreed compensation for Lightmaker's loss of revenue by reason of such early termination and not as a penalty) which shall be no less than the remaining charges due or which would have been payable under the Contract.

9.4 On termination of the Contract by Lightmaker may remove all materials held on Lightmaker's computers and remove all privileges entitled to The Client.

9.5 In the event that the Contract is terminated owing to the non payment of hosting or domain fees then Lightmaker reserve the right to display a Deactivation Notice on the World Wide Web, at The Clients URL i.e. on their Website, or Websites, detailing the reason for terminating the hosting, and/or provision of any other Lightmaker service. Said Deactivation Notice shall be as at <http://www.lightmaker.com/deactivation/>

9.6 After termination, if Lightmaker agrees that The Client's Website may once again be reconnected to the WWW, any reconnection will be subject to an administration charge, together with any outstanding charges payable prior to the reconnection.

9.7 In the event of termination by Lightmaker then Lightmaker shall return to The Client, upon The Client's request, all Client Material within thirty (30) days.

10 Termination of the Contract by The Client

10.1 The Client may terminate this Contract for default following a material breach by Lightmaker of its obligations hereunder, provided that written notice shall offer to Lightmaker a thirty (30) day period for remedial action. If after thirty (30) days, the cause of the default remains uncorrected, then The Client may terminate this agreement by written notice to Lightmaker.

10.2 In the event of Termination of the Contract for default by Lightmaker then Lightmaker shall deliver all completed works, including production files to The Client, which have been paid for up until the date of termination.

- 10.3 The Client may only terminate the Contract for convenience if all outstanding invoices have been settled and the terms of the Contract have been satisfied in full.
- 10.4 Termination of the Contract by The Client will result in the retaining by Lightmaker of all monies received from The Client who will not be entitled to a refund of monies paid, either pro-rata or at the entire Contract price.

11 Copyright and Ownership

- 11.1 Any service, concept, idea, design, programming, and/or "look and feel" remain the property of Lightmaker, until settlement of any, and all, outstanding accounts with regard to that service, concept, idea, design, programming, and/or "look and feel".
- 11.2 The copyright licence for use of any of Lightmaker's services, concepts, ideas, designs, programmings, and/or "look and feels", once all accounts have been settled, is for the use on the Internet and the World Wide Web only.
- 11.3 Any further use of any of Lightmaker's services, concepts, ideas, designs, programmings, and/or "look and feels" in any other format, or media, other than the Internet and the World Wide Web, will be subject to negotiation, and any agreement will be made in writing between Lightmaker and The Client.
- 11.4 All production files remain the copyright and ownership of Lightmaker at all times, unless otherwise specifically agreed in writing by the acting Managing Director of Lightmaker.
- 11.5 All source code and production files for TotalMediaTechnology remain the copyright and ownership of Lightmaker at all times. For terms and conditions for TotalMediaTechnology please refer to the relevant TotalMediaTechnology licence agreement.
- 11.6 All source code and production files for Lightmaker CMS applications remain the copyright and ownership of Lightmaker at all times. For terms and conditions for Lightmaker CMS applications please refer to the relevant Lightmaker CMS licence agreement.

12 Seal of approval and awards

- 12.1 From the beginning Lightmaker have worked to ensure that quality is at the core of all developments. We insist on running each project through a series of strict quality controls prior to its release culminating in a Lightmaker Seal of Approval. The seal of approval is visually present at the bottom right hand corner of the website with the wording "Site by Lightmaker" and a link to <http://www.lightmaker.com>.
- 12.2 For the more technically minded it is also worth noting that Lightmaker insert copyright header code in the source code of pages produced, designed or maintained by Lightmaker.
- 12.3 Lightmaker may add the Client's company logo and an http link to the Website in the Portfolio section of www.lightmaker.com and with the Client's prior written approval also promote the Website in appropriate Awards categories.

13 Shared Server Hosting (if applicable)

- 13.1 Lightmaker agrees to provide Shared Server Hosting from the date agreed by the parties for the Website under a SLA of 99.5% subject to these terms and conditions.
- 13.2 Shared Server clients are provided a maximum Server bandwidth allocation of 128kbps per month, unless otherwise agreed in writing, without incurring any additional charges. Any transfer in excess of this allocation will result in a reasonable charge for each additional 64kbps block required per month, or part thereof. Charges will be payable as per the relevant invoice terms.
- 13.3 Lightmaker may from time to time recommend an upgrade from a Shared Server solution to a dedicated Server solution. Such recommendation shall be presented to The Client in writing and accompanied by qualifying data, appropriate and reasonable implementation schedule, and costs. Any failure to adopt a dedicated Server Solution following said recommendation within the reasonable implementation schedule specified shall render the applicable SLA null and void for the purposes of the Shared Server Contract.
- 13.4 Unless Lightmaker receive notice in writing from The Client terminating the Shared Server Contract at any time prior to the renewal date, The Client will be deemed to renew the Contract at the end of the twelve (12) month period and be subject to the terms and conditions referred to herein.

- 13.5 The Client agrees not to perform any action, which will result in the reduced performance of the Shared Server to the detriment of other Shared Server clients.
- 13.6 The Client agrees not to use Lightmaker's Servers to send unsolicited or spam e-mail to other Internet users. Failure to satisfy this condition will result in the termination of the Contract.
- 13.7 Applicable charges for Shared Server Hosting shall be payable in advance.

14 Dedicated Server Hosting (if applicable)

- 14.1 Lightmaker agrees to provide Dedicated Server Hosting from the date agreed by the parties for the Website under a Service Level Agreement of 99.5% subject to these terms and conditions.
- 14.2 Any Server hardware, software or licenses provided by Lightmaker in order to fulfil the Dedicated Server Contract shall remain the property of Lightmaker at all times.
- 14.3 Physical Access to any Server hardware, software or licenses shall only be granted with a minimum of 7 days notice in writing to Lightmaker.
- 14.4 Unless Lightmaker receive notice in writing from The Client terminating the Dedicated Server Hosting Contract at any time prior to the renewal date, The Client will be deemed to renew the Contract at the end of the twelve (12) month period and be subject to the terms and conditions referred to herein.
- 14.5 The Client agrees that they will not have administrative access to the Dedicated Server to perform functions, which could jeopardize the uptime of the Dedicated Server and not allow Lightmaker to fulfil its obligations under the SLA.
- 14.6 Lightmaker may from time to time recommend an upgrade to the Dedicated Server. The nature of said upgrade shall be presented to The Client in writing and accompanied by qualifying data, appropriate and reasonable implementation schedule, and costs. Any failure to adopt said upgrade within the reasonable implementation schedule specified shall render the applicable SLA null and void for the purposes of the Dedicated Server Contract.
- 14.7 The Client agrees not to use the Dedicated Server to send unsolicited or spam e-mail to other Internet users. Failure to satisfy this condition will result in the termination of the Contract.
- 14.8 Applicable charges for Dedicated Server Hosting shall be payable in advance.

15 Assignment

Either Party may assign the benefit of this contract following receipt of written agreement from the other Party. Such agreement not to be unreasonably withheld.

16 Entire Agreement

This Contract forms the complete and exclusive agreement between the Parties in relation to the Services. All previous agreements, correspondence and understandings relating to the subject of this Contract are superseded by this Contract (except that neither Party excludes liability for any fraudulent pre-contractual misrepresentations on which the other can be shown to have relied). In the event and only to the extent of any conflict between the Contract and these terms and conditions or any referenced or attached document, the Contract will take precedence.

17 Partnership

No provision of this Agreement creates a partnership between the parties or makes a Party the agent of the other Party for any purpose. A Party has no authority or power to bind, to contract in the name of, or to create a liability for the other Party in any way or for any purpose.

18 Force Majeure

Neither Party will be liable for any breach of its obligations under this Contract to the extent that it is prevented from performing them due to circumstances beyond its reasonable control.

19 Jurisdiction

The validity, construction and enforceability of this Agreement shall be governed in all respects by the law of Florida, USA.

20 Severability

If one or more of these terms and conditions shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

21 Notice

Any notice required to be given under this Contract shall be deemed received upon personal delivery or three (3) days after mailing if sent by registered or certified mail to the addresses of the parties set forth above, or to such other address as either of the parties shall have provided to the other in writing.

22 Waiver

The waiver by either Party of any breach or default of any of the provisions of this Contract by the other Party shall not prevent the subsequent enforcement of the relevant term, and shall not be deemed a waiver of any subsequent breach.

Last amended 04th September 2007
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