



A) THE PARTIES

1. elephantmedia ("The Company")
2. ("the Client")

B) RECITALS

The Company is engaged in the business of providing web-hosting and related services.

The Client wishes to use these services, and the Company agrees to provide services to the Client on the following terms and conditions:

C) OPERATIVE PROVISIONS

1. DEFINITIONS

"Agreement" means this Agreement between the Company and Client incorporating Schedules 1 and 2 thereof;

"Bandwidth" means the allocated transmission capacity, measured in bits per second, of the network connection as specified in the Agreement;

"Charges" means those charges set out in Schedule 2 of the Agreement.

"Server" means the computer equipment operated by the Company in connection with the provision of the Services;

"Service" or "Services" means the service or services respectively set out in Schedule 1 of this agreement;

"Web site" means the area on the Server allocated by the Company for the Client's use as a site on the Internet.

2. WEB SITE HOSTING and EMAIL

2.1. The Company makes no representation and gives no warranty as to the accuracy or quality of information received by any person via the Server and the Company shall have no liability for any loss or damage to any data stored on the Server;

2.2. The Client shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server;

2.3. The Client represents, undertakes and warrants to the Company that the Client will use the Web Site allocated to the Client only for lawful purposes. In particular, the Client represents, warrants and undertakes to the Company

that;

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

2.3.2. The Client will not publish, post, link to or transmit

(a) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;
(b) any material containing a virus or other hostile computer program;
(c) any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction; provided by The Company to The Client.

2.4. The Client shall keep secure any identification, password and other confidential information relating to the Client's account and shall notify the Company immediately of any known 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;

2.5. The Client shall observe the procedures which the Company may from time to time prescribe and shall make no use of the Server which is detrimental to other customers of the Company;

2.6. The Client shall procure that all electronic mail and other electronic material transmitted using the Server is sent in accordance with applicable legislation (including data protection legislation) and a in secure manner;

2.7. Any access to other networks connected to the Company must comply with the rules appropriate for those other networks;

2.8. While the Company will use every reasonable endeavour to ensure the integrity and security of the Server, the Company does not guarantee that the Server will be free from unauthorised users, hackers or other malicious parties, and the Company shall be under no liability for non-receipt or misrouting of electronic mail or for any other failure of electronic mail or other electronic material transmitted using the Server;

3. RESELLING

3.1. The Client may not resell the Service or any part thereof without prior written agreement from the Company.

4. DOMAIN NAME RESGISTRATION

4.1. The Company makes no representation that the domain name the Client wishes to

register is capable of being registered by or for the Client or that it will be registered in the Client's name. The Client should therefore not assume registration of the Client's requested domain name(s) until the Client has been notified that it has or the Client has been registered. Any action taken by the Client before such notification is at the Client's risk;

4.2. 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 the Client is aware of those terms and conditions and that the Client complies with them. The Client shall have no right to bring any claim against the Company in respect of refusal to register a domain name or cancellation of the domain name by the relevant naming authority.

4.3. The Company shall have no liability in respect of the use by the Client of any domain name; any dispute between the Client and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, the Company shall be entitled, at the Company's discretion and without giving any reason, to withhold, suspend or cancel the domain name. The Company shall also be entitled to make representations to the relevant naming authority but will not be obliged to take part in any such dispute;

4.4. The Company gives 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 which conflicts with the Client's domain name or which otherwise affects the Client's use of the Client's domain name;

5. THE COMPANY SERVICE

5.1. Requests relating to the provision of Service are, unless otherwise agreed, to be made or confirmed in writing or by electronic mail;

5.2. The Company will use all reasonable endeavours to adhere to any dates proposed by either the Company or the Client for the provision of Service, however any such date is to be treated as an estimate only and the Company accepts no liability for failure to meet such dates;

5.3. The Company will use all reasonable endeavours to provide a reliable Service, however it is not practicable to provide such a Service free of faults and the Company does not undertake to do so. In the event of a fault in Service, the Client must report the fault by telephone facsimile or electronic mail to the Company's Technical Support at the appropriate numbers or addresses or other such numbers or addresses that the Company may from time to time provide. Upon receipt of the fault report, the Company will take all proper steps without undue delay to correct the fault. The Company shall not, in any event, be liable for interruptions of Service or down-time of a Server;

5.4. The Company may:

- temporarily suspend for the purpose of repair, maintenance or improvement, part or all

of Company's service, generally without notice.

- give or update instructions regarding the use of the Service which in the Company's reasonable opinion is necessary in the interests of safety, or to maintain or improve the quality of Service to the Company's customers and any such instructions shall whilst they are in force, be deemed to form part of this Agreement,
- vary the technical specification of Service for operational reasons,
- the Company undertakes to use reasonable endeavours to restore Service as soon as practicable after any such suspension;

5.5 The Client must:

Notify The Company of any change of telephone number, postal address, email address or any other contact detail. Failure to do so which leads to The Company being unable to contact The Client in any way will at The Company's discretion result in suspension of service pending resumption of communications with The Client.

6. COMMENCEMENT and CANCELLATION

6.1. The Service commences on _____ and shall continue indefinitely until cancelled by either party after giving at least thirty days notice. If the Client gives notice, the Client shall pay all charges due for any remaining part of the Minimum Period of Service unless the Client gives notice because we intend to change any of the terms and conditions of this Contract to the Client's detriment.

7. BANDWIDTH UTILISATION

7.1. There is no specific Bandwidth or data-transfer frequency restriction. Nevertheless, if it is the Company's reasonable opinion that the Client's use of the Server is to the measurable detriment of the services available on the Server to other Clients, the Company will discuss measures with the Client for remedying the situation, which the Client may be obliged to follow.

8. CONTENT and MISUSE

8.1. The Client will use all reasonable endeavours to ensure that the Company Service is used or includes content that conforms to the laws of this country and will not knowingly permit any illegal use or such use that will bring the Company into disrepute;

8.2. The Client must not use the Service:

to send or receive any material which is offensive, abusive, indecent, obscene or menacing; or in breach of confidence, copyright, privacy or any other rights; or in breach of any provisions as contained within clause 3 of this Agreement; or other than in conformance with the acceptable use policies of any connected networks and the Internet standards;

9. CHARGES and PAYMENT

9.1. Charges and terms of payment for the Service are set out in Schedule 2. All payments must be in UK Pounds Sterling unless agreed in writing otherwise. If any cheque from the Client is returned by the bank as unpaid for any reason, the Client will be liable for a "returned cheque" charge of 30 Pounds Sterling.

9.2. Without prejudice to the Company's other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, the Company shall be entitled forthwith to suspend the provision of Services to the Client;

9.3 A Minimum Period of 12 months of Service begins from 30 days after account activation unless we are notified in writing that you do not require our services.

10. DEFAULT

10.1. If the Client:

does not pay the charges in accordance with the provisions of clause 9 of this Agreement, or breaks this Agreement in any other way; or is subject to bankruptcy or insolvency proceedings; the Company can (without prejudicing, losing or reducing any other right or remedy) suspend service, including partially, temporarily without notice, albeit the Client remains liable to pay rental during the suspension, or terminate this Agreement by immediate notice, without prejudice to the Company's pre-existing rights;

10.2. 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;

10.3. The Client continues to be liable to pay all charges which are due for Service during any period in which the Client does not comply with this Agreement;

10.4. On termination of this Agreement or suspension of the Service, the Company shall be entitled immediately to block the Client's Web Site or related Service and to remove all data located on it. The Company shall be entitled to delete all such data but may, at its discretion, hold such data for such period as it may decide to allow the Client to collect it, subject to payment in full of any amounts withstanding and payable to the Company. The Company shall further be entitled to post such notice in respect of the non-availability of the Client's Web Site or related Service it thinks fit;

10.5. If the Company waives a breach of this Agreement by the Client, that waiver is limited to the particular breach. Any delay by the Company in acting upon a breach is not to be regarded in itself as a waiver.

11. TERMINATION OF SERVICE

11.1. This Agreement may be terminated by either party on giving at least 30 days written notice to the other. If the Company gives notice, the Client shall pay all charges owed to the Company up to the expiry of the notice. If the Client gives notice, the Client shall pay all charges due for any remaining part of the Minimum Period of Service unless the Client gives notice because we intend to change any of the terms and conditions of this Contract to the Clients detriment.

12. NOTICES

12.1. Any notice to be given by either party to the other may be sent by either electronic mail, fax or recorded delivery to the address of the other party as appearing in this Agreement or any other address as such party may from time to time have communicated to the other in writing, and if sent by electronic mail shall, unless the contrary is proved, be deemed to be received on the day it was sent or, if sent by 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;

13. MATTERS BEYOND THE COMPANY'S REASONABLE CONTROL

13.1. The Company is not liable for any breach of this Agreement or liable for any delay or failure in performance of any part of these conditions and its commitments when caused as a result of Force Majeur, war, civil disorder, industrial disputes, inclement weather, acts of local or central government or other competent authorities, and failure by other service providers.

14. LIABILITY

14.1. The Client acknowledges that the Company has no control over the information transmitted via the Service and that the Company does not examine the use to which the Client puts the service or the nature of the information the Client is sending or receiving. The Client hereby excludes all liability of any kind for the transmission or reception of information of whatever nature;

14.2. The Company undertakes no liability whatsoever for the acts or omissions of other providers of telecommunication service or for faults in or failures of their apparatus;

14.3. The Company is not in any way liable in this Agreement or otherwise for 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 consequential loss whatsoever.

14.4. The Company makes no warranty as regards to its services or equipment 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.

14.5. All conditions, terms, representations and warranties relating to the Service 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, subject always to subclause 14.6;

14.6. Nothing in these terms and conditions shall exclude the Company's liability for death or personal injury resulting from the Company's negligence;

14.7. The Company's total aggregate liability to the Client for any claim in Contract, tort, negligence or otherwise arising out of or in connection with the provision of the Service shall be limited to the charges paid by the Client in respect of the Service which is the subject of any such claim;

14.8. In any event no claim shall be brought unless the Client has notified the Company of the claim within one year of its arising;

14.9. While the Company will endeavour to make periodic backups of Client and system data, the Client acknowledges that it is the Client's responsibility to ensure the integrity of his data at all times. Backups of web-server access logs will not be taken by the Company, and archived web-server access logs may be deleted at any time and without notice by the Company.

15. INDEMNITY

15.1. The Client shall indemnify the Company and keep it indemnified and hold it harmless from and against any breach by the Client of these terms of business and any claim brought against the Company by a third party resulting from the provision of Service by the Company to the Client and the Client's use of the Service and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by the Company in consequences of the Client's breach or non-observance of this Agreement;

16. INTELLECTUAL PROPERTY RIGHTS

16.1. The Client 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;

17. ASSIGNMENT

17.1. The Client may assign all or part of this Agreement to any other party only with the prior written agreement of the Company. The Company reserves the right to assign all or part of this Agreement at any time to any subsidiary or

associate company of the Company.

18. LAW

18.1. This Agreement shall be governed by and construed in accordance with English law and the Client hereby submits to the exclusive jurisdiction of the English courts.

19. HEADINGS

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

20. ENTIRE AGREEMENT

20.1. These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between the Client and the Company relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral: between the Client and the Company in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, the Client has not relied on any representation other than those expressly stated in these terms and conditions and the Client agrees that he shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.

