

Term and Conditions

PARTIES

- (1) Media Magic Limited of 340 School Road, Sheffield, S10 1GR, registered number 04974636 (“Media Magic”).
- (2) The organisation whose details appear in the Customer Sheet (“the Customer”)

INTRODUCTION

- (A) Media Magic has developed software for use in the accommodation/lettings market
- (B) The Customer wishes to use this software product in its business

1. INTERPRETATION

- 1.1 “Agreement” – includes the Service Sheet and Documentation;
- 1.2 “Anniversary” – each twelve month period from the initial Start Date;
- 1.3 “Service Sheet” – the form signed by both parties setting out Services and other details;
- 1.4 “Start Date” – the date of delivery of Software unless otherwise stated in the Service Sheet;
- 1.5 “Customer site” – the site on which Software is installed as stated in the Service Sheet;
- 1.6 “Charges” – any charges payable under this Agreement;
- 1.7 “Documentation” – all user manuals relating to Software;
- 1.8 “Services” – services to be provided by Media Magic as detailed in this Service Sheet;
- 1.9 “Support” – the maintenance and support services;
- 1.10 “Software” – the object code of the software, being AutoMagic Version 1 and any Software Development;
- 1.11 “Open Source Software Licence(s)” Licences for Open Source Software;
- 1.12 “Software Development” – Customer Specific modifications to Software eg additional modules;
- 1.13 “Open Source Software” – freely available software subject to Open Source Software Licences.

2. PRODUCTS AND SERVICES TO BE PROVIDED

- 2.1 Media Magic shall:
 - 2.1.1 supply Software;
 - 2.1.2 license Software as described in Clause 5; and
 - 2.1.3 provide Support;
 - 2.1.4 provide any Services.on the terms which follow.
- 2.2 Acceptance of these terms shall be deemed upon use by the Customer of the Software or commencement of Service.

3. CUSTOMER OBLIGATIONS

- 3.1 The Customer must:
 - 3.1.1 back up its data at least once in every 24 hours; and
 - 3.1.2 comply with any other Customer Obligation in the Service Sheet or Documentation.
 - 3.1.3 ensure that the terminals and server can be connected to the internet with a bandwidth of at least 100Kbps.

4. PAYMENT TERMS

- 4.1 The Customer shall pay the Charges and taxes such as VAT at the rate and in the manner prescribed by law.
- 4.2 Charges for Software and Support are payable annually in advance on the Start Date and payment for each subsequent year must be made no less than 1 month before any Anniversary to ensure continuation a rolling annual basis. Charges for Support may be adjusted in line with inflation and increased operational costs.
- 4.3 Where additional users are added during any Anniversary period, the Charge shall be payable on an annual basis in advance, no pro-rata calculations will apply.
- 4.4 Charges under 4.3 and any other Charges are payable 14 days after date of invoice.
- 4.5 If Charges are not paid within 14 days of the due date Media Magic reserves the right (without prejudice to its other rights and remedies) to charge interest on the outstanding Charges on a daily basis from the due date to the date of payment at the rate of 4% above the base rate of Bank of England from time to time in force.
- 4.6 Notwithstanding clause 4.4 and 4.5 all invoices will be outstanding at any Anniversary Date.

5. LICENCES

- 5.1 Media Magic grants to the Customer a personal, non-exclusive and non-assignable licence to use the Software for its own internal business purposes at the Customer site on an annual basis up to the maximum number of terminals as stated in the Service Sheet subject to payment of outstanding Charges.
- 5.2 Where the Customer defaults under clause 4.2 and 4.6, Media Magic reserve the right to temporarily block access to the Software until payment in full.
- 5.3 The Customer may not use the Software to provide the Software to a third party, for example as an application service provider or bureau service.
- 5.4 The Customer shall not make or permit to be made copies of the whole or any part of Software or the Documentation.
- 5.5 The Customer may not decompile the object code of Software for any reason.
- 5.6 The Customer shall not make any changes to the Software, or the Documentation.
- 5.7 The Customer shall not tamper with, install additional software or otherwise make changes to the server or terminal running the database with out the prior permission of Media Magic.

6. SUPPORT

- 6.1 Support will be provided from the Start Date for each Anniversary period subject to clause 4.2.
- 6.2 Support is provided for Software only. Media Magic will use all reasonable endeavours to:
 - 6.2.1 fix bugs in Software and Services;
 - 6.2.2 make available new releases and versions of Software from time to time, at Media Magic's sole discretion;
 - 6.2.3 keep Software compatible with new versions of the operating system and databases on which it runs.

7. WARRANTY

- 7.1 Media Magic does not warrant that the Software or Services shall be error or bug free.
- 7.2 Media Magic excludes any implied condition or warranty concerning the quality or fitness for purpose of Software, whether such condition or warranty is implied by statute or common law.
- 7.3 The Customer acknowledges that the Software incorporates Open Source Software and warrants to Media Magic that it shall comply with the Open Source Software Licences (which can be provided on request).
- 7.4 Media Magic warrants to the Customer that it has not made any modifications to the Open Source Software subject to clause 7.4.
- 7.5 The Customer will indemnify Media Magic against any claims for infringement or third party rights arising from its use of the Open Source Software.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Media Magic will indemnify the Customer against any claims for infringement of third party rights arising from the Customer's use of Software.
- 8.2 The Customer acknowledges that the copyright and all other intellectual property rights in Software and the Documentation belong to either Media Magic or its third party licensor.

9. LIMITATION OF LIABILITY

- 9.1 As a matter of practical risk management, Media Magic limits its maximum liability for any and all breaches of contract, negligence or misrepresentation relating to each Service Sheet or to a series of related Service Sheets to £25,000; however, its liability for (1) death and personal injury caused by its negligence and (2) fraudulent misrepresentation is unlimited.

- 9.2 Any person who is not a party to this Contract shall have no right to enforce any term of this Contract against Media Magic under the Contracts (Rights of Third Parties) Act 1999.

10. TERMINATION

- 10.1 Either party may give written notice to the other to terminate this Contract immediately if that other party commits any material breach of its duties and fails to remedy that breach within 28 days of written notice of that breach.
- 10.2 The licence shall terminate immediately if the Customer has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over any of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- 10.3 Upon termination (howsoever arising) the Customer shall return all Software and Documentation to Media Magic.
- 10.4 Media Magic reserve the right to:
 - 10.4.1 check that Software has been deleted from Customer equipment. Such access request shall be made in writing including reasonable notice; and
 - 10.4.2 charge for the export of data or any other exit Service.

11. DISPUTES

- 11.1 This Contract shall be governed by the laws of England and Wales.
- 11.2 Either party may request resolution of a dispute by an ADR procedure. If either party will not participate in an ADR procedure or the claim arises from unpaid invoices, the dispute shall be decided by the High Court of England and Wales and the parties submit to its exclusive jurisdiction for that purpose.

12. GENERAL

- 12.1 This Contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to that subject matter.
- 12.2 The Customer shall not assign or otherwise transfer this contract. Media Magic may assign this contract to Media Magic by giving the Customer written notice.