

# inCharge.co.uk Master Services Agreement

## Standard Terms and Conditions for the provision of services

These Terms and Conditions apply to the provision of services by inCharge.co.uk to the Customer, as detailed in the Schedule.

### 1 Interpretation

1.1 In these Terms and Conditions (except where the context otherwise requires):

“**Addendum**” means an additional document associated to these Terms and Conditions outlining specific and further Terms and Conditions in connection with additional services provided by inCharge.co.uk;

“**Adult Material**” the definition of such will be at the discretion of inCharge.co.uk but shall include all pornography, erotic images or otherwise lewd or obscene content;

“**Agreement**” means these Terms and Conditions together with any Schedule, Additional Notes and Addendum/Addenda that is marked as being an addition/additions to these Terms and Conditions;

“**Confidential Information**” means any information in whatever form disclosed by either party to the other, directly or indirectly, which is marked as confidential or proprietary or which, by its very nature or in the circumstances surrounding disclosure, ought to be treated as confidential, including without limitation information relating to the business of the disclosing party;

“**Content Management System (CMS)**” means core technology developed and wholly owned by inCharge.co.uk and licensed to the Customer to enable information to be published on a website without technical expertise.

“**Deliverables**” means the results of the Services provided by inCharge.co.uk;

“**Effective Date**” means the date this Agreement is entered into by both parties;

“**Fees**” means the fees payable by the Customer to inCharge.co.uk for the Services;

“**Force Majeure**” means, in relation to either party, any circumstances beyond the reasonable control of that party including (insofar as beyond such control but without prejudice to the generality of the foregoing expression), any strike, lock-out or other form of industrial action, any act or omission of Internet service providers, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or Act of God, difficulty or increased expense in obtaining staff, materials, goods or raw materials in connection with the performance of this Agreement;

“**Illegal Material**” includes copyrighted works, commercial audio, video, or music files and any material in violation of any Federal, State or Local regulation;

“**Intellectual Property**” means any invention or discovery, improvement, design, process, information, know-how, copyright work (including without limitation rights in and to technical processes, systems, methods, software design, algorithms, code, scripts or other computer software), rights in databases, domain name, trade mark, trade name or get-up, all records, reports, documents, papers and other materials whatsoever and all other similar proprietary rights anywhere in the world;

“**Payment Details**” means the details and dates outlined in any associated Schedule or Addendum (if any) for payment of Fees;

“**Proposal**” means a detailed document provided by inCharge.co.uk to the Customer, where appropriate, describing the Services to be completed, and containing any technical, charging, third party product and duration of project information;

“**Schedule**” means an additional document associated to these Terms and Conditions outlining specific details and Terms and

Conditions relevant to additional services provided by inCharge.co.uk

“**Server(s)**” means computer(s) connected to the Internet;

“**Services**” means those services provided in connection Support and Web Hosting;

“**Support**” means assistance and problem resolution provided by inCharge.co.uk by email, telephone or attendance at a Customer site;

“**Warez**” includes pirated software, ROMS, emulators, phreaking, hacking, password cracking IP spoofing etc, encrypting of any of the above and Illegal and Adult Material and also includes any sites which provide “links to” or “how to” information about such material;

“**Web Hosting**” Server(s) configured with the appropriate software to respond to requests from connected clients;

1.2 Any reference in these Terms and Conditions to a clause is to the relevant clause of these Terms and Conditions and any reference to a sub-clause or paragraph is to the relevant sub-clause of the clause in which it appears or to the relevant paragraph in any Schedule and/or Addendum/Addenda marked as part of this Agreement.

1.3 The clause headings are included for convenience only and shall not affect the interpretation of these Terms and Conditions.

### 2 General Duties of inCharge.co.uk

2.1 InCharge.co.uk shall provide the Services in accordance with this Agreement. Time shall not be of the essence in the provision of the Services.

2.2 InCharge.co.uk shall at all times during the period of this Agreement use reasonable care and skill in connection with the provision of the Services

2.3 InCharge.co.uk may use the services of any third party, including without limitation sub-contractors, whether for information or for the supply of goods or services.

2.4 Nothing in this Agreement shall be construed as imposing on inCharge.co.uk duty of exclusivity to the Customer or as a restriction on inCharge.co.uk providing Services of any kind, at anytime to any third party.

### 3 Support Services

3.1 For the avoidance of doubt Support provided by email shall be free of charge and where Support is provided via telephone, inCharge.co.uk will charge the standard hourly rate. Further, where some technical intervention by inCharge.co.uk is required to resolve a Support issue, this will be charged at the standard hourly rate.

3.2 InCharge.co.uk shall provide Support to the Customer as outlined in Clause 3.1 and shall charge in accordance to the Support provided.

3.3 Support issues reported by the Customer via email will be dealt in a timeframe considered appropriate by inCharge.co.uk, and time shall not be of the essence for this Service;

3.4 The contact details for inCharge.co.uk’s Support Centre are:

**Email:** [Support@incharge.co.uk](mailto:Support@incharge.co.uk)

**Tel:** +44(0)1223 529009

**Address:** 49 Kingston Street,  
Cambridge, CB1 2NU  
United Kingdom

#### **4 Web Hosting Services**

- 4.1 InCharge.co.uk will adhere to terms and conditions of the supplier of the web hosting service to inCharge.co.uk.
- 4.2 InCharge.co.uk reserves the right to refuse service and/or access to its Server(s) to anyone.
- 4.3 The Customer is not permitted to resell, store or give away Web Hosting Services of their website to other parties. In this instance web hosting services are defined as allowing a separate, third party to host content on the owner's website. Exceptions to this include ad banners, classified ads and personal ads.
- 4.4 InCharge.co.uk reserves the right to suspend or cancel the Customer's access to Web Hosting, if inCharge.co.uk decides that the Service has been inappropriately used or otherwise.
- 4.5 InCharge.co.uk to do not allow Illegal Material, Adult Material or WareZ to be stored on its Servers.
- 4.6 InCharge.co.uk offers an unlimited use policy by maintaining very large ratios of bandwidth per customer. In rare cases, inCharge.co.uk may find the Customer to be using Server resources to such an extent that it may jeopardize server performance and resources for other customers. In such instances inCharge.co.uk reserves the right to impose the "High Resource User Policy" for the consideration of all customers.
- 4.7 High Resource User Policy - if a website is found to be monopolising the resources available, inCharge.co.uk reserves the right to suspend that site immediately. This policy is only implemented in extreme circumstances and is intended to prevent the misuse of inCharge.co.uk's Servers. In such an event the Customer may be offered an option whereby inCharge.co.uk continues hosting the website for an additional fee.

#### **5 Fees, Payment and Pricing**

- 5.1 The Customer shall pay the Fees, to inCharge.co.uk in connection with the provision of the Services.
- 5.2 Where specified in any Schedule or Addendum, as marked as part of this Agreement, the Customer will adhere to the dates and details outlined in the Payment Details Section;
- 5.3 Unless otherwise stated, inCharge.co.uk shall render invoices in respect of Fees the Customer at the end of each calendar month during the period of the provision of the Services. Payment shall be made by the Customer in accordance with instructions provided on inCharge.co.uk's invoices, within 30 (thirty) days of its receipt by the Customer.
- 5.4 The minimum unit of charge available to the Customer is ¼ (quarter) of an hour for Services with the exception of Web Hosting Services that shall carry a minimum charge of 1 (one) month.
- 5.5 If the Customer fails to pay any amount payable under for the Services by the due date for payment:
  - 5.5.1 InCharge.co.uk shall be entitled to charge interest on all sums outstanding, from the due date for payment up to the date of actual payment, after as well as before judgment, at the rate of 2 (two) per cent per annum above the base rate for the time being of Bank of England or at the rate which inCharge.co.uk is entitled to claim under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and in force from time to time whichever is the greater. Such interest shall accrue on a daily basis and be compounded monthly; and
  - 5.5.2 InCharge.co.uk reserves the right to suspend provision of the Services until payment is made in full and inCharge.co.uk shall be entitled to charge the Customer for all costs and expenses incurred by inCharge.co.uk

(including without limitation loss of profits) as a result of such suspension and further any costs that arise as a result of the action of debt collection which has been appropriately undertaken.

- 5.6 inCharge.co.uk reserves the right to increase prices from time to time,(no more than once in a 12 (twelve) month period) and will provide the Customer with 60 days written notice of such price increases together with a price list outlining new pricing.

#### **6 Obligations of the Customer**

- 6.1 The Customer expressly agrees that it shall not make operational use of any Deliverables provided by inCharge.co.uk under this Agreement until it has been accepted that the Deliverables fulfil the requirements of the Customer as outlined in any Schedule/Addendum marked as part of this Agreement or a Proposal. All operational use by the Customer of the Deliverables shall be deemed to be acceptance of the said Deliverables.
- 6.2 Should the Customer wish to terminate this Agreement, it should be in accordance with Clause 12. For the avoidance of doubt prior to the termination of this Agreement, the Customer shall be responsible for downloading any data entered on its website, and inCharge.co.uk shall not unduly prevent or obstruct such actions prior to termination.
- 6.3 Further the Customer shall:
  - 6.3.1 make available the appropriate personnel to liaise with inCharge.co.uk to provide any necessary assistance to inCharge.co.uk as maybe reasonably requested by inCharge.co.uk;
  - 6.3.2 provide inCharge.co.uk with all assistance and co-operation that inCharge.co.uk may reasonably require;

#### **7 Intellectual Property Rights**

- 7.1 Intellectual Property owned by either party on the commencement of this Agreement ("Background IP") will remain the property of that party.
- 7.2 The Customer hereby grants to inCharge.co.uk, solely for the purpose of the performance of the Services, a worldwide, royalty-free, non-exclusive licence to use that part of the Customer's Background IP, which is wholly and necessarily required for that purpose.
- 7.3 All right, title and interest in and to any Intellectual Property made, or originated or developed by inCharge.co.uk's personnel during the course of the provision of or otherwise related to the Services ("Foreground IP") shall belong exclusively to inCharge.co.uk.
- 7.4 Upon payment of the Fees and all other sums due to inCharge.co.uk in full, inCharge.co.uk will grant to the Customer a non-exclusive, world-wide, non-transferable, licence to use that part of inCharge.co.uk's Background IP used in the performance of the Services and that part of the Foreground IP which, in each case, is wholly and necessarily required to make use of the Deliverables. For the avoidance of doubt such licences shall only be granted for the duration of the Agreement between inCharge.co.uk and the Customer. Upon termination of the Agreement inCharge.co.uk shall no longer provide such licences to the Customer and the Customer shall no longer have the right to use any of the Deliverables provided by inCharge.co.uk.
- 7.5 If the Customer is in breach of the terms of such licence inCharge.co.uk shall be entitled to revoke any licence granted under the sub clause 7.4.

#### **8 Warranties**

- 8.1 The Customer warrants to inCharge.co.uk that:
  - 8.1.1 it has all necessary authorisations and consents to instruct inCharge.co.uk to carry out the Services; and

- 8.1.2 the information supplied to inCharge.co.uk up to date and correct, and no part of it will breach or infringe the rights of any person anywhere in the world (including without limitation any intellectual property rights).
- 8.2 The Customer indemnifies inCharge.co.uk and shall keep inCharge.co.uk indemnified against any and all claims, costs, losses, damages and expenses (including legal costs) arising from or relating to any breach or alleged breach by the Customer of clause 8.1, or arising from any use made by the Customer of the Deliverables which is contrary to inCharge.co.uk's reasonable directions.
- 8.3 InCharge.co.uk warrants to the Customer that the Deliverables and any documents, records or other works created by inCharge.co.uk during the course of the provision of the Services will not to the best of knowledge and belief of inCharge.co.uk infringe the intellectual property rights of any third party.
- 8.4 InCharge.co.uk does not warrant that any software or Services forming part of the Deliverables will meet the Customer's requirements, or that it will be free from viruses, trojan horses, bugs, omissions or errors, or that deficiencies or defects in such software or Services will be corrected. Except as otherwise expressly provided in this Agreement, all warranties, undertakings, conditions and terms, express or implied, whether by common law, statute, custom, trade usage, course of dealings or otherwise (including without limitation as to quality, fitness for purpose, performance or suitability for purpose) in respect of the Services and Deliverables are hereby excluded to the fullest extent permitted by law.
- 8.5 InCharge.co.uk agrees to insure the Customer and details of such insurance cover can be made available to the Customer, against any and all liability, loss, damage, costs and expenses under any final judgment or settlement made in relation to any proceedings brought against the Customer in the event that such proceedings are a result of a breach by inCharge.co.uk of the warranty in clause 8.3 PROVIDED ALWAYS that:
- 8.5.1 the Customer shall forthwith give written notice to inCharge.co.uk of any claims or proceedings following receipt of them;
- 8.5.2 the Customer shall make no admission of liability and must give inCharge.co.uk sole authority to defend or settle the claims or proceedings at inCharge.co.uk's cost and expense;
- 8.5.3 the Customer must give inCharge.co.uk all reasonable assistance in connection with the claims or proceedings at inCharge.co.uk's cost and expense; and

in addition, where an injunction restraining use or exploitation by the Customer of any Deliverables is, in the reasonable opinion of inCharge.co.uk's legal advisers, likely to be granted by the Court to a third party, inCharge.co.uk shall at its option either (i) render the Deliverables non-infringing, or (ii) procure a licence from the third party granting the Customer the right to continue using the Deliverables.

## **9 Confidential Information**

- 9.1 Each party agrees to keep and to ensure that its personnel shall keep the other party's Confidential Information and all other matters arising or coming to its or their attention in connection with the provision of the Services secret and confidential and not without the prior written consent of the other party to disclose the Confidential Information or permit it to be disclosed to any third party or to make use of or permit it to be made use of except as permitted under this Agreement.
- 9.2 Each party shall procure that its personnel having access to any of the Confidential Information or such matters of the other party shall be subject to the same obligations as the parties and shall take all reasonable steps to ensure that

their respective personnel are made aware of and perform such obligations.

- 9.3 The obligations of confidence referred to in this clause 9 shall not apply to any Confidential Information which:
- 9.3.1 either party can show to the satisfaction of the other by written records was already in its possession at the time of disclosure by the other party;
- 9.3.2 is received in good faith from a third party who, on reasonable enquiry by the receiving party claims to have no obligations of confidence to the other party in respect of it and who imposes no obligations of confidence upon the receiving party;
- 9.3.3 is already published at the date of disclosure or becomes publicly available through no fault of the receiving party;
- 9.3.4 is disclosed pursuant to legal, accounting or regulatory requirements; or
- 9.3.5 the receiving party has written authority from the disclosing party to disclose such information.
- 9.4 The obligations of the parties under this clause 9 shall survive the expiry or the termination of this Agreement for whatever reason.

## **10 Liability**

- 10.1 Except in the cases of death or personal injury caused by negligence, fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law, the liability of inCharge.co.uk in connection with the provision of the Services or in connection with any other activities undertaken by inCharge.co.uk pursuant to or for any purpose related to this Agreement, whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the sum of £500,000 (five hundred thousand pounds) or the total Fees payable under this Agreement, whichever is the lesser.
- 10.2 InCharge.co.uk shall not be liable to the Customer in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred by the Customer of a special, indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, use, business, reputation or goodwill or any deletion, corruption, destruction, loss or removal of data or delayed delivery, non deliveries or wrong delivery of data.
- 10.3 For the avoidance of doubt should any unauthorised personnel access and/or illegally copy any Confidential Information from the Customer's website, inCharge.co.uk accepts no responsibility or liability whatsoever in this instance or related matters.
- 10.4 The provisions of this clause 10 shall survive the termination of this Agreement for any reason.

## **11 Termination**

- 11.1 This Agreement shall remain in effect until terminated by either party. The Customer and inCharge.co.uk may terminate the agreement, for whatever reason in writing providing the other party with 30 (thirty) days advance notice of termination.
- 11.2 For the avoidance of doubt prior to termination of the Agreement the Customer shall follow obligations as expressly set out in Clause 6.2 and download all data entered on its website.
- 11.3 InCharge.co.uk shall not be required to fulfil its duties and obligations under this Agreement and the provisions of this clause 11 shall not apply if at any time inCharge.co.uk is prevented from fulfilling its duties and obligations by any acts or omissions of the Customer or the Customer's personnel.

11.4 Either party may give notice in writing to the other terminating this Agreement with immediate effect if:

11.4.1 the other commits a breach of this Agreement which in the case of a breach capable of remedy shall not have been remedied within 30 days of the receipt of a notice from the complaining party identifying the breach and requiring its remedy; or

11.4.2 the other is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986); or becomes insolvent; or is subject to an order or a resolution for its liquidation, administration, winding-up, or dissolution (other than for the purposes of a solvent amalgamation or reconstruction); or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets; or enters into or proposes any composition or arrangement with its creditors generally; or ceases or threatens to cease business; or is subject to any analogous event or proceeding in any applicable jurisdiction.

11.5 Upon the termination of this Agreement for whatever reason:

11.5.1 inCharge.co.uk shall deliver up to the Customer all of the Customer's Confidential Information and copies thereof in its possession, power, custody or control at that time;

11.5.2 the Customer shall pay to inCharge.co.uk all outstanding sums owed to inCharge.co.uk pursuant to this Agreement and

11.5.3 inCharge.co.uk shall deliver up to the Customer any outstanding Deliverables up to the date of termination.

11.6 Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and, in particular but without limitation, the right to recover damages against the other and all provisions which are expressed or intended to survive this Agreement shall remain in force and effect

## 12 Assignment

12.1 The Customer shall not assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of inCharge.co.uk.

12.2 InCharge.co.uk may assign and transfer its rights and obligations under this Agreement to any person, firm, partnership, unincorporated association, company and/or corporation.

12.3 This Agreement shall be binding upon the successors and assigns of the parties and the name of a party appearing herein shall be deemed to include the names of its successors and assigns provided always that nothing shall permit any assignment by either party except as expressly provided.

## 13 Force Majeure

13.1 If either party is unable to perform its duties and obligations under this Agreement by reason of Force Majeure it shall immediately notify the other party of the nature and extent thereof. Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder other than any obligation to make payment for any Services already performed, to the extent that such delay or non-

performance is due to any Force Majeure of which it has notified the other party; and the time for performance of that obligation shall be extended accordingly. As soon as the Force Majeure in question ceases to exist, the party relying upon it shall notify the other party in writing. If the Force Majeure continues for a continuous period in excess of three months, either party may terminate this Agreement on 30 days' written notice to the other.

## 14 Notices

14.1 Any notice to be given under this Agreement shall be in writing and shall be delivered by hand, sent by first class post or sent by facsimile (such notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in this Agreement (or such other address as may have been notified). Any such notice or other document shall be deemed to have been served: if delivered by hand - at the time of delivery; if sent by post - upon the expiration of 48 hours after posting; and if sent by facsimile - at 9.00 am on the next business day after the facsimile was dispatched.

## 15 General

15.1 The failure or delay of a party to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.

15.2 This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes and replaces all prior agreements, negotiations and discussions between the parties relating to it. InCharge.co.uk confirms and acknowledges that it has not been induced to enter into this Agreement by any representation, warranty, or undertaking not expressly incorporated into it. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

15.3 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15.4 The Contracts (Rights of Third Parties) Act 1999 as amended and in force from time to time shall not apply to this Agreement and nothing in this Agreement shall confer or purport to confer on or operate to give any third party any benefit or any right to enforce any term of this Agreement except as expressly provided in this Agreement.

15.5 If any provision of this Agreement shall be held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Agreement which will remain in full force and effect.

15.6 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

15.7 This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non-exclusive jurisdiction of the English Courts