



Master Services Agreement

Document Version: 1.4



Master Services Agreement MSA-11921



1. Master Services Agreement

This **Master Services Agreement ("MSA")** is made on [REDACTED] and seeks to formalise the commitment between:

1) **Adaptive Web Limited**, whose registered address of business is at The Mill, Lodge Lane, Derby, Derbyshire, DE1 3HB (hereafter referred as "**ADAPTIVE**"); and

2) [REDACTED], whose registered address of business is at [REDACTED] (hereafter referred as "**CLIENT**")

TERM: This agreement is applicable from [REDACTED] .

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2. General Terms & Conditions

2.1 APPLICATION OF THIS MSA

- 2.1.1 This MSA shall apply to all services provided to CLIENT during the term specified within this MSA.
- 2.1.2 No Services or Deliverables are provided under this MSA alone; only in conjunction with a separate Agreement which details the scope and terms of that specific project.
- 2.1.3 Each Agreement shall form a separate contract between CLIENT and ADAPTIVE but shall, unless explicitly detailed in the Agreement, be subject to the terms and conditions of this MSA.
- 2.1.4 In the event of a conflict between the terms of the MSA and the Agreement, the Agreement terms shall prevail.

2.2 WARRANTIES

Each Party represents and warrants to the other that the individual entering in this agreement on its behalf has the full right, power and authority to bind the respective Party fully thereto. ADAPTIVE warrants that the service will be performed in a competent professional manner and with the skills and care of best industry standards attained by companies offering services of the type offered by ADAPTIVE. ADAPTIVE warrants that it will not introduce any viruses or malignant data processes into the CLIENT's website or onto the CLIENT's systems. Without limiting the effect of the foregoing provisions, ADAPTIVE shall:

- (a) take reasonable precautions to preserve the integrity of any data which it processes and to prevent any corruption or loss of such data;
- (b) make a backup copy of such data and the CLIENT's website every week and record the copy on media from which the website and data can be reloaded if there is any corruption or loss of the website or data; and
- (c) in such event and if attributable to any default by ADAPTIVE, promptly restore the website and data at its own expense or, at the CLIENT's option, promptly reimburse the CLIENT for any reasonable expenses it incurs in having the website data restored by a third party.

2.3 DISCLAIMER OF WARRANTIES

Except as expressly set forth in this agreement, neither party makes any representation or warranty, express, implied or statutory, regarding any and all products, services, content, equipment or facilities, including without limitation, warranties of quality, performance, non-infringement, merchantability or fitness for a particular purpose. Nor are there any warranties created by a course of dealing, course of performance or trade usage. Neither party guarantees that the operation of its internet portal(s), site(s), software programs or server(s) or the performance of its online functions and services will be error-free or uninterrupted.

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2.4 INDEMNIFICATION

Each party (the "indemnifying party") agrees to indemnify, defend, and hold harmless the other party and its respective successors, officers, directors, and employees from and against any and all actions, causes of action, claims, demands, costs, liabilities, losses, expenses, judgments, proceedings and damages (including reasonable legal fees): (i) arising from the indemnifying party's performance or lack of performance of its duties under this Agreement; or (ii) arising from the indemnifying party's breach of any warranty and/or representation; or (iii) arising from the infringement of a third party's intellectual property rights in connection with materials provided by the indemnifying party.

2.5 LIMITATION OF LIABILITY

Nothing in this agreement shall operate to exclude or limit either party's liability for: (a) breach of IP Indemnity; (b) breach of data protection law; (c) death or personal injury caused by its negligence; (d) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; (e) fraud; (f) wilful act or (g) any other liability which cannot be excluded or limited under applicable law. Except for the foregoing, each party's total liability under this agreement is limited to either the value of services rendered over the 12 month period preceding an event that leads to a loss, or £30,000 (whichever is greater).

Subject to the first sentence of the immediately preceding paragraph, in no event shall either party be liable to the other, whether in contract or in tort or under any other legal or equitable theory (including strict liability) for any indirect, incidental, exemplary, punitive, special or consequential damages, including loss of profits, revenue or use, incurred by either party in connection with this agreement, even if the other party or any other person has been advised of the possibility of such damages.

2.6 OTHER WARRANTIES

ADAPTIVE will use its reasonable endeavours to provide continuity of service but is not liable to CLIENT for compensation of any kind for any disruption to the service whether caused through the fault of ADAPTIVE or otherwise. ADAPTIVE makes no warranty or representation as to the suitability of ADAPTIVE's products for CLIENT's purposes. CLIENT enters into this agreement reliant solely upon its own judgment.

2.7 DATA PROTECTION

Each party will comply with its obligations under relevant data protection laws. As per GDPR, CLIENT, as Data Owner, must inform ADAPTIVE if they consider us to be a Data Processor and, if so, inform ADAPTIVE of any specific data processing requirements that CLIENT has in relation to GDPR. ADAPTIVE is happy to review and discuss entering into a Data Processing Agreement with CLIENT should the CLIENT wish to propose such an agreement.

Additionally, ADAPTIVE's standard policies regarding Privacy and Data, Data Security and Data Breach can all be found at www.adaptive.co.uk/policies, and ADAPTIVE will adhere to such policies.

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2.8 ANALYTICS

ADAPTIVE reserves the right to monitor the traffic moving through the website for the purpose of system performance analysis with prior agreement with CLIENT.

2.9 FORCE MAJEURE

ADAPTIVE shall not be liable for any failure or delay in performance under this agreement where such failure or delay is caused by matters beyond ADAPTIVE's control, provided that a failure by ADAPTIVE's sub contractors shall be deemed to be within ADAPTIVE's control.

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3. Terms & Conditions of Trade

3.1 PAYMENT TERMS

Where an account is unpaid for more than 14 days past the due date on the invoice (which will be 30 days from the invoice issued date) ADAPTIVE reserves the right to pause their services. This may include ceasing any support or development work or, in the case of hosting arrangements, disconnect the website or other related service. Reasonable efforts will be made by ADAPTIVE to resolve any unpaid invoice(s) with CLIENT prior to ceasing services. No payments are refundable.

3.2 VARIATION OF FEES

ADAPTIVE reserves the right to vary the monthly or annual fees, if applicable, at any time to reflect the introduction of, or change in the rate of any Value Added Tax or similar. In such cases, advance notice in writing will be given to CLIENT with at least 60 days' notice.

3.3 NOTICE PERIODS

Cancellation of support, hosting and ongoing development services is subject to 30 days written notice by either party.

3.4 TERMINATION

Each party has a right to terminate the agreement with immediate effect by giving written notice if: (a) the other party commits a material breach of its obligations under this agreement and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach; or (2) any distress or execution is levied on the other party's property or if the other party has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, commits any act of bankruptcy, is wound up or goes into liquidation or is unable to pay its debts as they fall due, or if the other party suffers any analogous proceedings under English law or any applicable foreign law.

3.5 OPEN SOURCE SYSTEMS IMPLEMENTED BY ADAPTIVE

Drupal, Linux and associated Open Source software is distributed under the GNU General Public License as published by the Free Software Foundation and is to be used by CLIENT as such.

3.6 ASSIGNMENT

Neither party can transfer or assign its rights under this agreement without the prior written agreement of the other party, and such transfer or assignment will not be unreasonably withheld.

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3.7 WEBSITE CONTENT & CONDITIONS

Prohibited Content Use:

3.7.1 Websites, which have Adult Material of any sort, including links to adult websites, are strictly prohibited. "Adult Material" is defined as pornography, nudity and sex related merchandising.

3.7.2 Websites promoting illegal activities, including, but not limited to 'Virus', hacking, serial numbers, cracks, or information which violates any international laws.

3.7.3 Websites whose primary purpose is file distribution or mirroring another website.

3.7.4. Links to other adult websites, illegal audio/video sites, virus sites, or hacking websites.

Websites found to be in violation of this policy are subject to account termination without notice. Any account terminated under this clause during the minimum period shall be liable to pay the total amount owing within the Initial Term of this agreement.

3.8 COPYRIGHT MATERIAL

Materials distributed on your website cannot infringe upon another group's copyrights. This includes distributing copyright software, pirated software, audio/video files which usually consist of copyrighted media, unlicensed images and Emulators/ROMs. Please ensure that your website consists of your own work and that none of the contents on your website infringe upon anyone else's copyrights.

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4. GENERAL PROVISIONS

4.1 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is caused by circumstances beyond its reasonable control, including but not limited to acts of God, war, terrorism, civil commotion, industrial disputes, pandemics, failure of third-party suppliers or networks, or governmental restrictions or actions.

4.2 RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

4.3 SERVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, the validity of the remainder of the Agreement and of the remainder of the provisions in question shall not be affected.

4.4 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.

4.5 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of England and Wales, and the parties submit to the exclusive jurisdiction of the English courts.

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Acceptance of Master Services Agreement

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Adaptive Approval:

Please sign above

Print Name:

Date:

Client Approval:

Please sign above

Print Name: _____

Date: