

New iMedia Solutions Services Terms & Condition

Terms & Conditions

The above service ("Service") is provided by New iMedia Solutions Ltd (the "Company") (in conjunction with any of Company's suppliers ("Suppliers")) to Customer subject to the following Terms & Conditions.

1. The Customer may settle the Total Service Package Charge in full or in installments, each installment payment amount is specified above. The payment terms are as follows:
 - 1.1 The first installment payment is payable upon signing of this application form.
 - 1.2 The subsequent installment(s) payment is payable before the due date of the invoice (Exclude China Post Postal Stationary Service).

The Company reserves the right to terminate the Service should the Customer fail to settle any of the installment payment before the respective invoice due date. If the Service is terminated due to Customer's default in payment as aforesaid, Customer is required to pay \$500 (or such other amount as from time to time determined by the Company) reconnection charge for re-activating the Service. Re-activation of service is at the sole discretion of the Company.
2. Unless otherwise agreed by the parties, all advertisements shall be published within 90 days upon signing of contract, failing which the order would be regarded as cancelled and Customer is required to pay the termination charge as set out in Clause 3.
3. If the Customer cancels the Service before provision of Service the Customer is required to pay a cancellation charge equivalent to the Total Service Package Charge or \$3,500, whichever is higher.
4. If the Customer terminates the Service after provision of Service and before the expiry of the Minimum Service Period:
 - 4.1 The Customer is required to pay a termination charge equivalent to the total charges which would have been payable for the remainder of the Minimum Service Period; and
 - 4.2 Any Free Bundle Services shall be terminated immediately and Customer shall pay the Company an amount equivalent to the list price of the Bundle Services.
5. Charges are payable in advance and are non-refundable and non-transferable. One month service charge is payable by the Customer upon each order placement. The Company reserves the right to apply a credit limit from time to time for Charges incurred by the Customer and to suspend access to the Services, in whole or part, if the credit limit is exceeded. The credit limit and terms for the account(s) will be subject to the final approval of the Company.
6. In the event that any of the services/service features provided herein by the Company remains not consumed by the expiry date of the Minimum Service Period, the Company may, at its sole discretion and subject to the Customer's due performance of its obligations hereunder, extend the last day of Minimum Service Period up to a maximum of 6 months for consumption of the services/service features, thereafter, any unused service/service features shall be forfeited forthwith and the Customer shall not be entitled to any refund or other remedies of whatsoever nature.
7. Any media charges do not include the design, production or set up charges. All creative, design, production and set up charges will not be refunded if the Customer cancels or terminates the Service.
8. The Customer acknowledges and agrees that:
 - 8.1 The Service (which shall include any contents and/or materials in whatever form provided to the Customer in connection with the Service) is provided by the Company and/or Suppliers on an "as is" and "as available" basis and without warranties of any kind, either express or implied, including, without limitation, warranties of merchantability, fitness for a particular purpose or non-infringement of any copyright, trademark, patent, any other intellectual property rights or any other third party rights of whatever nature. Neither the Company nor Suppliers makes any warranty that the Service will meet any Customer' requirements, fulfill any purposes or needs, or that it will be uninterrupted, timely, secure, or error free.
 - 8.2 The Company's ability to perform its obligations depends, amongst other things, on the due and prompt performance by the Suppliers. Accordingly, the Customer agrees not to claim against the Company in respect of any default or breach on the part of the Company of any obligations to the extent it is caused by any default, breach, failure or delay of the Suppliers.
 - 8.3 In the event that the Company fails to provide the Service to the Customer and/or the Company exercises its right to terminate the Services pursuant to the terms hereof, the sole liability of the Company shall be limited to either (at the sole option of the Company) a pro-rata refund of service fee or provision of the Service at a later time ("Sole Liability"). Other than Sole Liability, the Company shall under no circumstances be liable to Customer for any loss (whether direct or indirect) of revenue, loss of profits or any consequential loss whatsoever. The aggregate maximum liability of the Company to Customer shall not, for any reason, exceed the aggregate payments actually made by the Customer to the Company.
 - 8.4 None of the Suppliers or the Company or their respective affiliates or their respective officers, directors, employees or agents shall be liable, under any circumstances, for any loss of business, profits, or goodwill, loss of use or data, interruption of business, or for any indirect, special, incidental, or consequential damages of any nature, even if the Suppliers or the Company are aware of the risk of such damages, that result in any way from Customer's use of or inability to use the Service.
9. Without prejudice to the Company's right to terminate the Service pursuant to Clause 10.3 of its General Terms and Conditions of Service and subject to Clause 8 above and other terms and conditions herein contained, the Company reserves the right at its absolute discretion and without giving any reason therefor to decline to publish, omit, immediately suspend or terminate in whole or in part any advertisement and/or the Service, or change the position of any advertisement if the Company considers necessary and desirable or if in the absolute opinion of the Company that it will not be commercially viable for the Company to continue to provide the Service.
10. The Customer shall not abuse the Services and is strictly prohibited from using the Services for the purpose which the Company, in its sole discretion, considers as immoral, obscene, defamatory, unsolicited advertising or promotion, unlawful or otherwise in any way contrary to the generally accepted norms and expectations of the Internet community.
11. The Customer warrants that:
 - 11.1 the Customer contracts with the Company as a principal or has obtained proper authorization from its principal;
 - 11.2 all the contents and/or materials in whatever form provided to the Company by the Customer in connection with the Service, the advertising content, publication of the advertisement and exercise of any license granted to the Company or the Suppliers in Clause 15 hereinbelow will not breach any contract or violate any applicable laws and rules, or infringe, violates or misappropriates any copyrights, trademarks, or any other intellectual property rights, rights of publicity, rights of personality, rights of privacy, rights to payment of royalties, proprietary rights or any other rights of any third party; or result in any tort, injury, damage or harm to any third party;
 - 11.3 Customer is not aware of any pending or threatened claims, suits, actions or charges pertaining to the advertising contents, including without limitation any

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- claims or allegations that any or all of the advertising contents infringe, violate or misappropriate the intellectual property rights of any third party. Customer further agrees to notify the Company immediately if Customer becomes aware of any actual or potential claims, suits, actions, allegations or charges that could affect either party's ability to fully perform its obligations or to exercise its rights herein; and
- 11.4 Customer will be solely responsible for the acquisition of any and all third party clearances, permissions and licenses which are necessary in connection with the Company or the Suppliers' exercise of any license granted to them in Clause 14 hereinbelow, including, without limitation, with respect to the use of any copyrighted or trademarked materials and the use of any names, likenesses or biographical materials, and for the payment of any and all applicable guild fees and for any and all residuals, payments, fees or royalties, if any, payable under any collective bargaining agreement or otherwise.
12. The Company shall not be held liable for any loss, damage or claim arising from not publishing the advertisement on a specified date or at all for whatsoever cause, nor will it be held responsible for any error contained in the published advertisement.
13. The application of the Service and the creative of the Services are made subject to the approval of the Suppliers. The Customer agrees that the Suppliers shall have absolute discretion as to whether or not to provide the Services to any party.
14. Customer agrees to grant to the Company and the Suppliers a non-exclusive and non-transferrable right to use, modify, reproduce, distribute, display and transmit all the contents and/or materials in whatever form provided to Company by the Customer in connection with the Service, and the advertising content in electronic form via the internet on the Suppliers' sites (and to permit users to download and print the advertising contents for personal use). The Company and the Suppliers' said license to modify Customer's advertising content shall be limited to modifying the advertising content for the purpose of fitting it with the format and look and feel of the Suppliers' sites.
15. The Customer agrees to indemnify and hold the Company, and its affiliates, officers, agents or other partners and employees, harmless from any claim or demand, including reasonable attorneys' or experts' fees, made by any third party due to or arising out of the Customer's intentional or negligent misuse of the Service, or that Customer's violation of these Special Conditions, or that Customer's intentional or negligent violation of any rights of others, or any violation of the intellectual property rights of any third parties in respect of all the contents and/or materials in whatever form provided to Company by the Customer.
16. The Customer shall be fully responsible for any content (such as information, data, text, software, music, sound, photographs, graphics, video, messages or other materials) that the Customer creates, transmits or displays (or allows any other person to create, transmit or display) while using the Service and for any consequences thereof. The Customer agrees not to use, or allow any other person to use, the Service for any illegal or improper purpose, or in any manner, which infringes the rights of any person (including intellectual property rights).
17. The Customer agrees that the Company retains and owns all intellectual property rights to any documents and design including but not limited to the graphical design, editorial copywriting and computer programming generated by the Company for the Customer due to the Customer's use of the Service.
18. The Customer agrees to allow the Company to publish or in any manner display any designs and works that the Company prepared for the Customer (as a whole or any part thereof) in electronic or print format for advertising or promotional purposes of the Company.
19. The Customer shall be responsible for the maintenance of the hosting and content of his/her own websites and web pages (hereinafter called "Landing Websites and Landing Web Pages") to which the Service will direct Internet users' clicks. The Company will not monitor the content of the Landing Websites and Landing Web Pages, nor will the Company assume any liability in respect of any content uploaded, published or otherwise transmitted.
20. The Company:
- 20.1 holds no responsibility in management and maintenance of any Customer-owned devices to work with the Company's systems;
- 20.2 holds no responsibility in management and maintenance of any of the Suppliers' websites and is not liable for any loss for any reason in case any failure of Service of the Suppliers' websites;
- 20.3 will try to maintain the server platform in good conditions by all means. However, the Company is not liable for any loss for any reason, which is claimed by the Customer, due to missing materials in the servers or failure of Service.
21. Whenever the Customer subscribes for the Service, the Customer is deemed to have agreed to and accepted the following terms and conditions. The Company and/or the Supplier(s) may revise the following terms and conditions and/or introduce additional terms and conditions from time to time. Such revision and/or addition shall become effective when displayed on the website of the Company (<http://www.newimedia.com>) and/or the website(s) of the Supplier(s), and shall be binding on the Customer if the Customer continues to use any of the Services.
- 21.1 The Terms and Conditions herein, the Company's General Terms and Conditions of Service and the Company's Privacy Policy which is available at <http://www.newimedia.com>
- 21.2 The respective Terms & Conditions of Suppliers, the list of Suppliers are available at the designated webpage of the Company http://www.newimedia.com/suppliers_list.pdf
22. Special conditions for Search Marketing
- 22.1 "Keyword" means a word or a phrase in English or Chinese or another language. "Keywords" means the plural form of Keyword. "Keyword List" means the list of Keyword the Company compiles for the Customer of the Search Marketing Service. "T&D" means Titles and Descriptions.
- 22.2 The Customer agrees that the Company, at its sole discretion, can select any software, hardware or third party tools to assist in providing the Service. The Company also reserves the right to determine what keywords and T&D to use.
- 22.3 The Customer agrees that the Company retains and owns all intellectual property rights to any documents generated by the Company for the Customer due to Customer's use of the Service. Such documents include, but not limited to, the editorial writing of the keyword-based advertisement's titles and descriptions, and the Keyword List the Company compiles for the Customer. The Customer agrees that the Company has the right to decide, at its sole discretion, whether or not to disclose the documents to Customer at any given time.
- 22.4 Guaranteed Clicks: Guaranteed Clicks services include Sponsor Advertisements and other applicable advertisements in Suppliers' websites and their partners' website. Subject to Clause 6 above, the Company shall deliver the guaranteed clicks within the relevant contract period.
23. Special conditions for DIY Online Service
- 23.1 Only those Customers who subscribe for the Company Search Marketing Service (each a "Bundled Service") are eligible to subscribe the corresponding DIY Online Service (each a "Bundled Plan") above.
- 23.2 The DIY Online Service plan does not include the subscription charges for Internet connectivity service.
- 23.3 The Customer acknowledges and agrees that the DIY Online Service and any necessary software used in connection with the DIY Online Service ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. The Company will grant to

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the Customer a personal, recoverable, non-transferable and non-exclusive right and license to use the Software during the term of the relevant contract with the Company; provided that the Customer does not (and does not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software.

23.4 The quoted DIY Online Service lead-time does not include the DNS application of new local or international domain.

23.5 The Customer is recommended to host their DNS at the Company for the DIY Online Service. If the Customer hosts their domain name in a third party, they are responsible to instruct the DNS administrator to point their request domain name to designated hosting website and make sure it is ready on the date specified in the "Target DIY Online Service Date".

23.6 The Company shall not be obliged to work with the Customer's DNS administrator to comply with such matters. In the event of any change in the company name, the Customer should inform the Company and submit a "Transfer of Ownership Application Form" whereby the DIY Online Service will continue to be provided on the same terms without any interruption or the Company shall be entitled to withdraw the above offers in such event.

23.7 The Customer acknowledges and agrees that any web page, which is developed using the Service, is dependent on and inextricably linked to the Service. Therefore upon termination of the Service, the Customer will no longer be able to access or use such web page. The Company takes no responsibility for such web page and related materials (such as providing access or backup) upon termination of the Service.

24. Special conditions for Email Marketing – Email Direct Mailing

24.1 In relation to the sending of commercial e-mail messages, the Customer shall comply with the Unsolicited Electronic Messages Ordinance. An opt-out choice of not receiving further marketing emails will be required in any advertising email.

25. Special conditions for Web Hosting Service, Webmail Service and Domain Name Registration Service

25.1 Web Hosting Service, Webmail Service and Domain Name Registration Service are provided by New iMedia Solutions Limited and use of such services shall be subject to the relevant terms and conditions which are specified and available at <http://www.newimedia.com/email-and-hosting-service-T&C.pdf>.

26. For avoidance of doubt, the Service provided herein shall be construed to fall within the definition of Services as stated in the Company's General Terms and Conditions of Service.