

## 1. DEFINITION OF TERMS

S.M.A.D Limited, registered office , Innovation Centre Derry, Bay Road, Londonderry, Northern Ireland BT48 7TG, trading as Surfmarketing.

**The Client** - the entity which enters into a contract with Surfmarketing.

**Domain Name** - the root address of a website, e.g. [www.webaddress.com](http://www.webaddress.com). All such names must be registered with the appropriate naming authority, which will usually charge a fee.

**Downtime** - time when the website is not accessible via the Internet. This may be because of a technical failure of the Host or because work is being carried out on the site.

**Host** – the server provided by Surfmarketing, on whose system the Website physically resides.

**Link, Hyperlink** - a 'clickable' link embedded on a web page which may take the form of a graphic or text.

**Search Engine** - a website which contains a directory of websites on the Internet enabling users to find websites by subject matter classification.

**Website** - a collection of web pages and associated code which forms an integrated presence.

**The Work** - the subject matter of the contract between the Client and Surfmarketing .

## 2. FEES

### 2.1

#### **Fees Payable**

Fixed monthly recurring payments (plus VAT at the prevailing rate at time of invoice) to be received into the bank account of Surfmarketing by the the agreed time of each month for the specified period. Surfmarketing reserves the right not to begin the Work until the initial payment has been paid in full.

### 2.2

#### **Maintenance Fees**

Unless otherwise agreed in writing, all maintenance plans will run for a minimum of 12 months. The 12 monthly payments of “£X” (+ VAT at the prevailing rate at time of invoice) will be used for **1** of the following: monthly maintenance and edits to the site, not to exceed “X” hours within each calendar month **OR non continuing** Search Engine Optimisation Work to a maximum value of “£X” in a month. Alternatively, the client may opt for a continuing Search Engine Optimisation plan of a maximum value of “£X” to be carried out over the remaining “X” months. N.B. This package can not be carried out in conjunction with any non continuing Search Engine Optimisation or monthly maintenance work. (Unless paid for separately.) These payments should be received in to the bank account of Surfmarketing by the 5th of each month. Termination of this agreement shall be by 3 months notice to be served no earlier than the passing of 9 months of the agreement. Early termination shall be with full payment of the remaining months of the agreement.

### 2.3

#### **Search Engine Optimisation Campaign Fees**

Unless otherwise agreed in writing, all search engine optimisation plans will run for a minimum of 12 months. The 12 monthly payments of “£X” (+ VAT at the prevailing rate at time of invoice) will be used for your chosen campaign. Alternatively, the client may opt for a maintenance plan of a maximum value of “£X” to be carried out over the remaining months of the agreement. N.B. This package can not be carried out in conjunction with any non continuing Search Engine Optimisation or monthly maintenance work. (Unless paid for separately.) These payments should be received in to the bank account of Surfmarketing by the 5th of each month. Termination of this agreement shall be by 3 months notice to be served no earlier than the passing of 9 months of the agreement. Early termination shall be with full payment of the remaining months of the agreement.

## 3. DISCLAIMERS

### 3.1

#### **Third Parties**

Surfmarketing can take no responsibility for services provided by third parties through us or otherwise, including the Hosting of the Client's Website, although Surfmarketing will endeavour to ensure that Website downtime is kept to a minimum.

### 3.2

#### **Maintenance and Correction of Errors**

Surfmarketing takes no responsibility for the functionality or maintenance (unless a maintenance contract is in place) of the Website after the Work has been completed. Errors (both technical and typographical) attributable to Surfmarketing

will be corrected free of charge, but Surfmarketing reserves the right to charge a reasonable fee for correction of errors for which Surfmarketing is not responsible, including, but not limited to malicious modification of the Website by a third party and typographical errors contained in materials provided to Surfmarketing by the Client.

### **3.3**

#### **Extent of Work**

Installation on the Internet is limited to the uploading of all necessary files to the Host, and testing of functionality. No registration of the Website with Search Engines will be undertaken unless otherwise agreed with the Client.

### **3.4**

#### **Consequential Loss**

Under no circumstances will Surfmarketing be responsible or liable for financial or other loss or damage caused by the failure or use or misuse of its software. The Client should ensure that data on their site is regularly backed up and that a contingency plan is in place to minimise possible losses as a result of software failure.

### **3.5**

#### **Status and Duration of Offers**

Proposals and offers are valid for a period of one month from the date issued. Surfmarketing is not bound to honour offers that have expired. Offers are not legally binding until an acceptable timetable for the work has been agreed by both parties. This timetable must be agreed within the month that the offer is valid. If an acceptable timetable has not been approved by both parties within one month of the offer being made, the offer is deemed to have expired.

### **3.6**

#### **Search Engine Listings**

Surfmarketing does not guarantee listings on Search Engines and the Client accepts that it is Search Engines and not Surfmarketing who determine whom they list and whom they will not. The Client further understands there is no guaranteed placement or rank on the Search Engines and that a new website may never even appear on Search Engines at all. Surfmarketing does not control Search Engines' algorithms and huge shifts can appear daily, weekly and even hourly.

## **4. COMPLETION OF WORK AND PAYMENT**

### **4.1**

#### **Completion of Work**

Surfmarketing warrants completing the Work in accordance with its Standard Terms and Conditions to the specifications previously agreed with the Client. Surfmarketing will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work since the agreement. Surfmarketing will not undertake changes to the specifications of the Work which would increase the cost, without prior written authorisation from the Client.

### **4.2**

#### **Supply of Materials**

The Client is to supply all materials and information required for Surfmarketing to complete the Work in accordance with the agreed specification. Such materials may include, but are not limited to, photographs, written-copy, logos and other printed materials. Where the Client's failure to supply such materials leads to a delay in completion of the work, Surfmarketing has the right to extend previously agreed deadlines for the completion of the Work by a reasonable amount. Where the Client's failure to supply materials prevents progress on the Work beyond the original estimated completion date, Surfmarketing has the right to invoice the Client for the remaining payments under Clause 2.1 Fee Payable.

### **4.3**

#### **Approval of Work**

On completion of the Work, the Client will be notified and have the opportunity to review it. The Client should notify Surfmarketing, in writing, of any unsatisfactory points within 7 days of receipt of such notification. Any of the Work which has not been reported in writing to Surfmarketing as unsatisfactory within the 7 day review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected, and the contract will be deemed to have been completed and the remaining payments under Clause 2.1 Fee Payable will become due. The Contract will remain in effect until all obligations have been completed in terms of this Clause.

### **4.4**

#### **Rejected Work**

If the Client rejects the Work within the 7 day review period, or will not approve subsequent Work performed by Surfmarketing to remedy any points reported by the Client as unsatisfactory, and Surfmarketing considers that the Client is unreasonable in his repeated rejection of the Work, the contract will be deemed to have expired and

Surfmarketing can take any legal measures to recover both payment for the completed Work and reasonable expenses incurred in recovering payment.

#### **4.5**

##### **Remedies for Overdue Payment**

If payment has not been received by the due date, Surfmarketing has the right to suspend ongoing work for the Client, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 21 days after the due date, Surfmarketing has the right to replace, modify or remove the Website and revoke the Client's licence of the Work until full payment has been received. By revoking the Client's licence of the Work or removing the web site from the Internet, Surfmarketing does not remove the Client's obligation to pay any outstanding monies owing.

### **5. INTELLECTUAL PROPERTY**

#### **5.1**

##### **Offers and Proposals**

Offers and proposals made by Surfmarketing to potential clients should be treated as trade secrets and remain the property of Surfmarketing. Such offers and proposals or the information contained within them must not be passed to third parties or publicly disseminated without prior written authorisation from Surfmarketing. This includes, but is not limited to, technical features, functionality, aspects of the design and pricing information.

#### **5.2**

##### **Warranty by Client as to Ownership of Intellectual Property Rights**

The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trademarks or any other material it supplies to Surfmarketing for inclusion on the Website. The conclusion of a contract between Surfmarketing and the Client shall be regarded as a guarantee by the Client to Surfmarketing that all such permissions and authorities have been obtained and that the inclusion of such material on the Website would not constitute a criminal offence or civil dispute. By agreeing to these terms and conditions, the Client removes the legal responsibility of Surfmarketing and indemnifies the same from any claims or legal actions however related to the content of the Client's site.

#### **5.3**

##### **Domain Name**

Any Domain Name obtained will belong to the Client. The Client agrees to indemnify Surfmarketing, including any incidental costs, against any claims that a Domain Name applied for, or obtained, violates the intellectual property rights of a third party. The Client warrants that the domain name sought is not a trademark of a third party.

#### **5.4**

##### **Licensing**

Once Surfmarketing has received full payment of all outstanding invoices and the Work has been approved by the Client in accordance with Clause 4.3 hereof, the Client will be granted a licence to use the Website and its contents.

#### **5.5**

##### **Trade Secrets**

Any code that is not freely accessible to third parties and not in the public domain, and to which Surfmarketing or their suppliers owns the copyright, may not be copied, published, distributed or passed to any third parties in any form without prior written consent from Surfmarketing. Unless previously agreed otherwise in writing, no modifications may be made by the Client or any third party to code to which Surfmarketing or their suppliers owns the copyright. Surfmarketing acknowledges the intellectual property rights of the Client. Information passed in written form to Surfmarketing, and that the Client has indicated is confidential or a trade secret, will not be published or made available in any other way to third parties without the prior written consent of the Client.

### **6. RIGHTS AND RESPONSIBILITIES**

#### **6.1**

##### **Right to Terminate**

Surfmarketing reserves the right to refuse or break a contract without prior notice, if it is believed that the Client, their Website, or any material is illegal, immoral or otherwise unacceptable.

(Projects) Should the client terminate the contract after work has started they forfeit their right to any monies already paid and may be subject to a claim by Surfmarketing for costs incurred in completion of the work to date up-to but not exceeding the agreed project cost.

(Monthly Maintenance & SEO Campaigns) Should the client terminate the contract before the completion of the minimum term and without giving the required 1 months notice, the client must pay Surfmarketing for the equivalent

fee for the remaining time on the agreement. IE If the agreement is cancelled with immediate effect with 9 months paid, the client must pay Surfmarketing the equivalent of 3 months payments as a cancellation fee.

## **6.2**

### **Events Beyond the Control of Surfmarketing**

Surfmarketing will not be liable for breach of contract where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of Surfmarketing.

## **6.3**

### **Supply and Pricing of Services**

Surfmarketing reserves the right to use whoever it feels appropriate at the time for third party software and services, and to alter its prices as necessary without prior notice and without affecting existing contractual pricing agreements.

## **7. INTERPRETATION**

### **7.1**

#### **Jurisdiction**

This Agreement shall be governed by the laws of England which shall claim venue and jurisdiction for any legal action or claim arising from the contract between Surfmarketing and the Client. The said contract is void where prohibited by law.

### **7.2**

#### **Survival of Contract**

Where one or more terms of the said contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable at law.

### **7.3**

#### **Change of Terms and Conditions**

These terms & conditions may change from time to time. The Client will be informed of revisions as and when they are issued.