

MadDash E-Media Terms & Conditions

1. Relationship Independent Contractor

In the performance of its services hereunder, MadDash will at all times be an independent contractor. This Service Agreement and any change orders or amendments hereto (hereinafter collectively, the "Service Agreement") and any services carried out hereunder shall not constitute, nor shall they be deemed to constitute, either party as an employee, agent, partner or joint venturer of the other, and neither party shall express or imply that it has the authority to create any obligation on behalf of the other party. MadDash retains the right at all times to perform services for others.

2. Customer Responsibilities

Customer shall assign an individual as its overall project manager (the "Project Manager") to work directly with the MadDash team throughout the video production. The Project Manager shall have personal knowledge of Customer's products and services. The Project Manager shall also have the authority to schedule access to all areas of Customer's facility, as needed, and shall be responsible for notifying Customer's employees, as well as other individuals, and authorized persons of any Customer or third-party property (including, but not limited to, intellectual property and confidential information), that Customer wishes MadDash to audio or video tape. The Project Manager shall also be solely responsible for procuring any permission, permits, or releases required for MadDash to lawfully tape these employees, individuals, and properties. The Project Manager shall ensure that any individual or thing that Customer desires to be included in the video production (voice or video) shall be "ready" to perform or be taped at the time scheduled.

3. Videography Services

A MadDash team member shall, on a date previously determined by the parties, take appropriate footage of Customer's facilities, equipment, products, general office areas, and individuals. MadDash retains the right to refuse to videotape any image, property, or individual that it deems inappropriate, offensive, or the videotaping of which it deems, in its sole discretion, to pose a risk of injury or loss to MadDash, its staff, or any third-party. Videography services shall be available to Customer for up to 8 hours per day. Any on-site work performed by MadDash outside of normally scheduled business hours (8am-5pm M-F) shall require a written change order and shall be subject to additional fees at MadDash's then current rates.

4. Final Product

MadDash shall initially provide Customer with a "Rough Cut" video, to which Customer may request one (1) set of changes. All changes requested by Customer following its request for this one set of changes shall require a written change order and shall be subject to additional fees at MadDash's then current rates. The final video ("Final Video") production shall be compatible with Adobe's Flash Technology, Version 10, and shall be programmed for inclusion within Client's chosen websites as well as the MadDash Video Library Management System. The Project Manager shall view the Final Video through an Internet connection, and shall provide Customer's final approval of the video, which approval shall not be unreasonably withheld.

5. Hosting

Pursuant to this Service Agreement, MadDash shall host, stream, and distribute the final video (the "Hosting Services") for the initial term of the Service Agreement beginning on the first day of the month following the month in which Customer executes the Service Agreement. The Hosting Services provided by MadDash to Customer shall automatically renew for a subsequent identical term at MadDash's then current hosting rates on the first day following conclusion of the initial term of the Service Agreement and on each anniversary of such automatic renewal date unless Customer terminates the Hosting Services by written notice at least thirty (30) days prior to the date of the first automatic renewal or any anniversary thereof, as the case may be. All additional terms of Hosting Services shall be separately charged to Customer at MadDash's then current rates. MadDash shall maintain all right, title, and interest in, and all copyrights of, all video elements and the streaming of the final video (including any other video footage provided Customer by MadDash) over the Internet. Any broadcast via the Internet of the final video or any such other footage provided Customer by MadDash by any party other than MadDash is strictly prohibited except that Customer may, for a monthly fee at MadDash's then current rates, secure from MadDash permission for a third party to broadcast the final video via the Internet for a period of time to be agreed upon by the parties. In all such instances, Customer agrees that the video shall be broadcast by the third party over the Internet in its entirety, specifically including, but not limited to, any introductory content crediting MadDash with the creation and/or production of the video. During any term in which MadDash is providing Customer with Hosting Services, MadDash shall provide reasonable traffic and performance measurements to Customer as requested by Customer.

6. Change Orders

Any additional labor or materials or changes in the agreed upon schedule requested by Customer not specifically included in this Service Agreement shall require Customer's authorization of an additional or amended quotation and change in stated costs, as determined by MadDash.

7. Project Staffing

MadDash may, at its sole discretion, engage subcontractors to perform services hereunder.

8. Payment of Fees

Customer agrees to pay MadDash in accordance with the schedule of fees set forth in this Service Agreement. Customer acknowledges that the billing portion of the Agreement is initiated on the first day of the month following the actual date of contract signature. Customer also agrees to reimburse MadDash for all authorized expenses incurred by MadDash in providing services hereunder. All invoice amounts are due and payable (without any offset or deduction) within thirty (30) days of the invoice date. All invoices not paid within thirty (30) days of the invoice date shall accrue interest charges at a rate of 1.5% per month (or such lower rate as may be the maximum allowable by law). MadDash's acceptance of late or partial payments (even if marked "paid in full" or the like) does not waive MadDash's rights to recover unpaid amounts. If, in order to collect payment due under this Service Agreement, MadDash must take action beyond invoicing Customer for services provided, Customer agrees to pay, in addition to the outstanding balance of any invoice, all contractual and statutory interest, as well as the costs and expenses of collection, including, but not limited to, attorneys fees and costs. Customer understands and agrees that MadDash may, at its sole discretion, change the terms of Customer's credit standing with MadDash (in accordance with MadDash's credit requirements). Where Customer has executed this Service Agreement so as to secure services for the benefit of a third party, and where an invoice for such services

remains unpaid for more than (40) days after the invoice date, Customer agrees that it shall be deemed to have automatically assigned to MadDash all of its rights to receive payment from such third party for services rendered by MadDash, and that MadDash may, at its sole discretion, seek payment directly from the third party.

9. Rescheduling/Cancellation

If Customer desires to reschedule any portion of the services scheduled to be provided hereunder, it must provide MadDash with a minimum of twenty one (21) days written notice of such desire to reschedule. Customer's failure to provide this minimum notice will result in a rescheduling fee of one-third (1/3) the total cost of the Service Agreement. Customer's failure to accept delivery of the rescheduled portion of services on the reschedule date shall be considered a cancellation by Customer of this Service Agreement. In the event that Customer cancels this Service Agreement by any means and for any reason following its execution and delivery to MadDash, Customer shall pay to MadDash a cancellation fee in the amount of 100% of the total amount of the Service Agreement.

10. Confidentiality; Nondisclosure

The terms and conditions of this Service Agreement are confidential and may not be disclosed by MadDash or Customer to any third party, except to their respective professional advisors or as otherwise required by law.

11. Representations of Customer; Indemnification

Customer represents and warrants that it is solely responsible for securing appropriate releases or licenses from: (1) any living person or a duly authorized representative of any deceased person, (2) a duly authorized representative of any customer, competitor, industry organization, or other third party, (3) the owner or duly authorized licensor of any building, property, image, graphic, trademark, service mark, copyrighted work, logo, trade name, or any other object or thing, provided or made available by Customer to MadDash, or indicated by Customer for inclusion in the services provided hereunder, allowing unlimited use by MadDash of such names, likenesses, and descriptions for the creation, translation, storage, display, access, and performance of the services provided hereunder. Customer represents and warrants that any video will not include content that constitutes libel, slander, or defamation against any person or entity. Customer agrees to hold MadDash and its successors, assigns, officers, directors, shareholders, employees, agents, and licensees (together, the "Indemnified MadDash Parties"), harmless from and against any loss, damage or expense, including reasonable attorneys' fees, that the Indemnified MadDash Parties may suffer as a result of a breach or alleged breach of the foregoing warranties, or as a result of claims or actions of any kind or nature resulting from the use in any manner of the names, descriptions, or likenesses of any person or thing described above.

12. MadDash Warranties

MadDash warrants that it will provide services under this Service Agreement in a good and workmanlike fashion, and in accordance with prevailing industry standards. Customer's sole remedy for any breach of warranty shall be the replacement of services provided in breach. In order to be eligible for such replacement of services, Customer must provide MadDash with written notice of any alleged breach of warranty within thirty (30) days of Customer's approval of the final video. Any failure by Customer to provide such notice shall render this warranty null and void.

13. Non-Competition/Non-Solicitation

Customer agrees that for a period of two (2) years following the execution of this Service Agreement: (a) it will not directly or indirectly compete, or undertake any planning to compete, with MadDash anywhere in the world, and (b) it will not, and will not assist anyone else to, (i) hire or solicit for hiring any employee of MadDash or seek to persuade or induce any employee of MadDash to discontinue employment with MadDash, or (b) solicit, encourage or induce any independent contractor providing services to MadDash to terminate or diminish its relationship with MadDash. For the purposes of this Service Agreement, an "employee" of MadDash is any person who was such at any time within the preceding two years.

14. Disclaimer of Warranties

THE EXPRESS WARRANTIES SET FORTH IN SECTION 12 ABOVE ARE THE ONLY WARRANTIES GIVEN BY MADDASH WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS SERVICE AGREEMENT. MADDASH MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKES NO WARRANTIES WITH RESPECT TO NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

15. Limitation of Liability

IN NO EVENT SHALL CUSTOMER BE ENTITLED TO, OR SHALL MADDASH BE LIABLE FOR, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, ADVERTISING COSTS, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, PROMOTIONAL OR ADVERTISING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF MADDASH HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CUSTOMER'S RECOVERY FROM MADDASH FOR ANY CLAIM EXCEED THE CHARGES FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM WHETHER SUCH CLAIM IS BROUGHT IN CONTRACT, WARRANTY, TORT, PURSUANT TO STATUTE, OR OTHERWISE.

16. MadDash Indemnification

Notwithstanding anything to the contrary contained in this Service Agreement, MadDash agrees to hold Customer and its successors, assigns, officers, directors, shareholders, employees, and agents (together, the "Indemnified Customer Parties") harmless from and against any loss, damage or expense, including reasonable attorneys' fees, suffered by the Indemnified Customer Parties as a result of any actual or claimed patent infringement caused by MadDash's incorporation of allegedly infringing technology into any final video under this Service Agreement.

17. Termination

MadDash may immediately terminate this Service Agreement: (a) if Customer fails to make timely payment of any MadDash invoice; (b) if Customer assigns or transfers, voluntarily or by operation of law, any or all of its rights or obligations under this Service Agreement without the prior written consent of MadDash; or (c) if Customer or the third party for whose benefit Customer has executed this Service Agreement files a petition for bankruptcy, becomes insolvent, or makes an assignment for the benefit of its creditors, or a receiver is appointed for Customer, the third party, or either of their respective businesses. Termination by MadDash does not relieve Customer of its obligation to pay for all services rendered prior to termination.

18. Survival

In addition, where the context of any provision indicates intent that the provision shall survive the term or termination of this Service Agreement, the provision shall survive.

19. Notices

Any notices to be given hereunder by either party to the other must be made in writing, and delivered by personal delivery, facsimile, or by registered or certified mail, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in this Service Agreement, but each party may change such address by written notice in accordance with this paragraph. Notices delivered by personal delivery or facsimile will be deemed to have been given upon actual receipt. Notices delivered by registered or certified mail will be deemed to have been given two (2) days after mailing.

20. Assignment Prohibited

Customer may not assign this Service Agreement or any of its rights or obligations hereunder by operation of law, merger, or otherwise without the prior written consent of MadDash.

21. Force Majeure

MadDash shall not be liable for delays in delivery of services and/or non-delivery of services in the event of an act of God, actions by any governmental or quasi-governmental entity, Internet failure, equipment failure, power outage, fire, earthquake, flood, insurrection, riot, act of terrorism, act of war, explosion, embargo, strike (whether legal or illegal), labor or material shortage, transportation interruption of any kind, work slow-down, or any condition beyond MadDash's control affecting the delivery of services in any manner.

22. Entire Agreement

This Service Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, proposals and communications between the parties, written or oral, relating to the subject matter of this Service Agreement. This Service Agreement may be modified only by writings duly signed by authorized representatives of both parties. This Service Agreement shall apply retroactively with respect to any performances of the parties pursuant to this Service Agreement that occurred prior to this Service Agreement being executed. In no event shall preprinted terms and conditions on a Customer document (P.O., confirmations, acceptances) modify or add to the terms of this Service Agreement.

23. Choice of Law and Venue

The construction, interpretation, and performance of this Service Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts excluding its conflicts of laws rules. The parties agree that the jurisdiction and venue of any action arising out of or relating to this Service Agreement shall be in a court of competent subject matter jurisdiction located in The Commonwealth of Massachusetts, USA and each of the parties hereby agrees to submit itself to the exclusive jurisdiction and venue of such courts for the purpose of such action.

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