

# Multimedia and Development llc A\_New\_Media\_Agency™

## Terms and Conditions (Updated as of April 2005)

Please print a copy for your records.

The terms and conditions of service outlined below is a six (6) page contractual addendum, serving as a legally binding contract to the project proposal or estimate that outlines the terms and conditions of any services or goods provided by Multimedia and Development llc, otherwise known as "MandD" (the agency providing the services or goods) to the Customer (the person(s), entity or entities receiving the services or goods) subject to the following terms and conditions of services as stated below:

**1. Acceptance.** A current and printable copy of these terms and conditions will be available on our web site for public review. We may change the terms and conditions at any time without notification. It is the Customer's responsibility to review, familiarize and check for updates of the terms and conditions. Any deposit or payment to Multimedia and Development llc for services or goods will serve as an indication and affirmation that the Customer has accepted, read and familiarized him/herself or the organization with Multimedia and Development llc's terms and conditions and/or a signed copy of the project proposal or estimate by all new Customers is also affirmation of acceptance of these terms and conditions.

**2. Charges.** Charges for services or goods to be provided by Multimedia and Development llc are defined in the project proposal or estimate that the Customer receives and approves via e-mail, online, fax or regular mail. **Advance Deposit:** All services or goods require an advance down payment as outlined in the proposal or estimate. Unless otherwise specified by the project proposal or estimate, projects are generally split up in thirds (1/3), with the remaining third (1/3) or balance of the project proposal or estimate's total to be due upon completion of the work. If maintenance service is part of the contract then Multimedia and Development llc reserves the right to change the rates for ongoing maintenance services with thirty (30) days advance notification to the Customer. **Payment types:** Payment for services or goods is due by certified cashier's check, money order, credit card (available via Paypal from the website or by phone), a verified company check (with prior approval) or company p.o. (with prior approval) should be remitted to Multimedia and Development llc, at this mailing address: 2481 Post Village Drive Smyrna, Georgia 30080.

**3. Customer Review.** Multimedia and Development llc will provide the Customer with an opportunity to review the appearance and content of all web site design, web development, graphic design, multimedia, development materials, or templates once they are completed. Such materials will be deemed acceptable and approved unless the Customer notifies Multimedia and Development llc of otherwise within two (2) business days from the date the materials are made available to the Customer. (Customers are notified by email when templates are ready for review. When email is down, then a fax will be sent to the Customer for review.)

**4. Turn-Around Time.** Multimedia and Development llc attempts to complete services commissioned by the Customer by the date specified in the project proposal, estimate or

production schedule unless there are specific project problems that may arise such as, but not limited to: **1-**If there are any changes to be made that go beyond the scope of the initial project proposal, estimate, or production schedule, the Customer will be notified and advised immediately (within 48 hours) by calling the Customer, then following up with a detailed fax or email as to how to proceed with the new changes. If needed, a revised estimate will be drawn up for review. **2-** Multimedia and Development llc strives to meet deadlines, but we cannot be held responsible for any Customer delays, or third-party delays such as outside use of vendors, contractors or outside firms such as partners that MandD may use from time to time. If a Customer, or third-party causes a specific delay (for whatever reason), the consequence is that this may affect the project's timeline or over-all project result. It is understood that Multimedia and Development llc cannot be held responsible for direct or indirect results of another party's actions. We will make every attempt to create solutions if such delays are caused. This may mean making adjustments to the original project proposal or estimate by revising costs. *If no completion date is specified, then all services will be completed 6 months or 180 calendar days from the date the initial deposit is received from the Customer (unless a delay is specifically requested, or caused by the Customer or a third-party).* **Rush charges:** A twenty-five percent (25%) rush charge is added for any services requested prior to the due date on the project proposal, estimate or production schedule (unless unforeseen circumstances causes a specific delay which will then be assessed on a case by case basis).

**5. Invoices and Payments.** The Customer will receive e-mailed invoices, unless otherwise specified. Invoices are due upon receipt, unless other arrangements have been made in writing by both parties. Accounts that are unpaid ten (10) calendar days from the due date of the invoice will be assessed a monthly service charge in the amount of one and a half percent (1.5%) which will be added to the total amount invoiced.

**6. Default.** All accounts unpaid after thirty (30) calendar days from the date invoiced will be considered in default, unless prior written arrangements or agreements have been met by both parties. If the Customer in default maintains any information or files on Multimedia and Development llc 's web space or acquired third-party web hosting account, Multimedia and Development llc will, at its discretion remove all such material from the web space. Removal of such material does not relieve the Customer of the obligation to pay any outstanding charges assessed to the Customer's account.

**Insufficient funds:** Checks returned for insufficient funds will be charged a \$25 fee and the Customer's account may be immediately considered to be in default until full payment is received. Customers with accounts in default agree to pay Multimedia and Development llc reasonable expenses such as, attorney fees and costs for collection by third-party agencies incurred by Multimedia and Development llc in enforcing these terms and conditions.

**7. Termination and Refund Policy.** All termination of services or goods by the Customer to Multimedia and Development llc must be requested in writing and will be effective upon receipt of such notice. Telephone or emailed requests for termination of services will not be honored. A written termination letter sent via fax or postal mail with the authorized signature of the company representative will be honored. The Customer will be sent a final invoice for all services, goods or work completed from the date of the first notice of written cancellation by the Customer. If Multimedia and Development llc terminates the services or goods commissioned by the Customer, the Customer will receive a formal letter with explanation sent via email, fax or postal mail listing why the

services have been terminated. Multimedia and Development llc at its discretion has the right to terminate services or goods at any time for any reason. **Refund Policy:** The Customer is entitled to receive a refund by check within 14-21 business days from the date of the termination notice only after all completed services, outstanding shipping fees, goods, and third-party costs and taxes have been deducted from the date of the written notice. The Customer will receive a final statement itemizing the charges for the services or goods already completed up till the point of the termination of services. A refund may not be given if the work completed exceeds the deposit amount, in this case the Customer will receive an invoice itemizing the work completed and for any work not covered in the deposit or subsequent payments to be paid immediately. **Media purchases and use of a third-party or third-parties,** may constitute outside vendors, contractors or firms such as but not limited to partners that MandD may use from time to time to elicit assistance based on scope of work, timelines and schedules that must be met. The Customer agrees that it is the sole discretion of MandD when it is applicable to engage the use of a third-party or third-parties in order to meet the demands of a project. In addition, the Customer agrees to indemnify and hold MandD harmless based on the actions of a third-party or third-parties that may jeopardize or cause harm to the project directly or indirectly prior, during and post-project. If the Customer feels that such damages have been done, then the Company's authorized representative will need to submit a formal claim in writing on company letterhead within 7 business days sent via Certified U.S. Postal mail of the supposed incident detailing and documenting the incident and dollar amount (if any) requested to be compensated. The Customer understands that MandD will do everything in its power and cooperate fully to the extent applicable if such damage has been done and attempt to remedy any such situations. However, this is not a guarantee. From time to time, the use of a third-party or third-parties may include but is not limited to shipping items from one location to another, whether locally, nationally or internationally. If items are shipped, the Customer understands it is the sole discretion of MandD to add these charges to the Customer's final invoice. If these charges do apply, the Customer acknowledges that MandD's invoices are to be paid immediately upon receipt by cashier's check or credit card. A company check must be pre-approved by a MandD authorized representative on a signed document on MandD's letterhead and sent via fax only. **Loss, delays and rights to legal claims:** The Customer agrees to indemnify and hold MandD harmless of any loss, claims, Acts of God, rights to monetary compensations or any other legal actions criminal or civil as a consequence to the item(s) in question. This includes but is not limited to the following, if the item(s) is damaged in the handling process, if there are weather delays, or other delays cause by the actions of the third-party or third-parties, the Customer further acknowledges and agrees to indemnify and hold MandD harmless of any mal-intent, negligence, criminal and or civil legal action as a result of a third-party or third-parties actions. Please note, MandD will attempt to insure packages and recover costs if applicable on behalf of the Customer and the value of the item. However, this is not a guarantee. Furthermore, the Customer agrees to indemnify and hold harmless, MandD, its Managing Members, Corporate Officers, Employees (full or part-time employees, and voluntary help) of any legal action that is a direct or indirect result of the third-party or third-parties actions. **Media buys with third parties:** In addition to the above, Multimedia and Development llc may contract with a third party or third-parties from time to time such as, vendors, contractors or outside firms such as partners that MandD may deem necessary to work with outside companies to provide low cost services to MandD's Customers. Therefore,

Customers may not receive a full refund, or any refund if a third-party has been used (or contracted out) for any media-related advertising or services that required an initial deposit or contract, such as (but not limited to) advertising in a publication, radio, television, online, acquisition of a web hosting account, e-commerce account or domain registration, etc. *Please see* additional terms of service agreement for specific media buys or third-party purchases included with your project or estimate. **Breach of**

**Agreement:** Multimedia and Development llc strives to complete the project specifications in the time frame allocated as outlined in the proposal or estimate. We strive to but may not always prevent unforeseen problems. However, should any problems arise, we will communicate to our Customer's within a reasonable amount of time (within 72 hours) by calling our Customer then following up with a written fax or email detailing the unforeseen problems. We will also make sure that the Customer gets a detailed list of the necessary steps involved in order to resolve situations or problems. Multimedia and Development llc does not assume direct responsibility for problems such as e.g. software or hardware failure, third-party issues or problems that arise from using third-party software, equipment or services. Multimedia and Development llc prides itself on the ability to make accurate and timely projections in meeting Customer's needs with projects and due dates. We pride ourselves in our honesty and communication in meeting our Customer's needs. However, we are not responsible for meeting requests that are beyond the project's scope as outlined in the project proposal, estimate or production schedule. If we must expand or change the scope of a project, then another proposal or estimate will be drawn up. Any further modifications will be charged and billed at fair market value (our services are generally discounted, therefore the revised estimate may reflect an increase in charges). If any modifications to the project are requested by the Customer that are not in alignment with Multimedia and Development llc's professional advice or in any way jeopardizes the quality of our service or products we deliver, we have the right to stop, refuse or continue work until a new proposal or estimate has been carefully drawn up, reviewed and signed by both parties. *In addition*, Multimedia and Development llc is not responsible for third-party delays or Customer delays (for whatever reason(s), or the Customer's lack of adherence to the production or project schedule (which in turn may have an adverse affect on a project's outcome). We create production or project schedules in order to be efficient and meet our Customer's goals and expectations. We cannot be held responsible when a Customer does not act in accordance with our production or project schedule, which includes but is not limited to, making necessary project materials or technical equipment available to us in a timely manner. We cannot be held responsible for the Customer going against our professional advice or specific project requests that directly or indirectly hinders the project in moving forward in a timely manner as to meet goals and expectations as outlined in the project proposal, estimate, or production schedule. *In the rare event that this occurs, the Customer forfeits the right to any refunds or deposits made to the project proposal or estimate.* Multimedia and Development llc prides itself in the artistry and care it devotes to the services and products we provide our Customers and cannot be held responsible for outside delays or problems.

**8. Legal Restrictions.** Multimedia and Development llc's services or goods may be used for lawful purposes only. Submission, transmission, or maintenance of any information or materials in violation of any state or federal statutes and/or regulations is prohibited. This includes, but is not limited to, material legally judged to be threatening or obscene. Multimedia and Development llc reserves the right to refuse service to the Customer without providing reason or cause.

**9. Images, editorial content and Copyright.** Customer retains the copyright to data, files, graphic logos or copy provided by the Customer, and grants Multimedia and Development llc the rights to publish and use such material. **Licensing:** Custom data, files, artwork, graphics, copy or any original material created by Multimedia and Development llc remain in full rights and ownership by Multimedia and Development llc. Any original work designed by Multimedia and Development llc is licensed to its Customers and remains the full right of Multimedia and Development llc. At its discretion, Multimedia and Development llc will grant the Customer rights through licensing for the use of such material. A separate agreement/payment of custom data, files, artwork, graphics, copy or any original material must be entered into in the event that the Customer wishes to obtain all rights and/or ownership for custom data, files, artwork, graphics, copy or any original material designed by Multimedia and Development llc. **Third-party licensing and copyright:** Multimedia and Development llc typically uses royalty free images, sound or photographs that are in our library. However, on occasion we may need to purchase a license for third-party images, sound, photographs or editorial content. The Customer will be given costs of for any third-party licensing and will be billed accordingly for any third-party content not designed by Multimedia and Development llc. *If the Customer secures any licensed content*, then the Customer must purchase or obtain permission and rights to use any information or files that are copyrighted by a third-party. The Customer is further responsible for granting Multimedia and Development llc permission and rights for use of the same and agrees to indemnify and hold harmless Multimedia and Development llc from any and all claims resulting from the Customer's negligence or inability to obtain proper copyright permissions. Every signed project proposal, estimate, or contract, paid invoice, deposit or payment(s) submitted for services shall be regarded as a guarantee by the Customer to Multimedia and Development llc that all such permissions and authorities have been obtained. Evidence of permissions and authorities may be requested by either party.

**10. Standard Media Delivery.** Unless otherwise specified in the project proposal or estimate, this agreement assumes that all text will be provided by the Customer in a traceable shipping (we suggest insuring the package if valued over \$50 dollars) or electronic format (ASCII text files delivered on floppy disk, CD or via e-mail or FTP) and that all photographs and other graphics will be provided physically in high quality print suitable for scanning or electronically in .gif, .jpeg or .tiff format. Additional expenses may be incurred and will be invoiced accordingly for corrective work, conversion of media or outside facility charges as outlined in the project proposal or estimate. Although every reasonable attempt shall be made by Multimedia and Development llc to return to the Customer any images or printed material provided for use in creation of the Customer's project such return(s) cannot be guaranteed unless the Customer requests materials to be sent via a traceable package with a tracking number and or/proof of delivery signatures.

**11. General Design Credit (online media).** A link to Multimedia and Development llc will appear in either small type or by a small graphic symbol/image at the bottom of the primary "home" page of the Customer's web site, custom artwork, graphic logos, copy or development services. If a graphic symbol/image is used, it will be designed to fit in with the overall web site, design, or development package.

**12. Access Requirements (online media).** Multimedia and Development llc retains full access to any web hosting accounts that we set up for the Customer for design, technical updates and online maintenance for the length of time we provide service, this includes any online media associated with a web hosting account. If the Customer's

web site is already installed on a third- party server, Multimedia and Development llc must be granted temporary read/write access to the Customer's storage directories, and those directories must be accessible via FTP. Depending on the specific nature of the project, other resources might also need to be configured on the server.

**13. Right To Pull (online media advertising or marketing).** Multimedia and Development llc also has the right to pull any custom design or editorial content if the Customer does not pay their invoices on time or has unresolved payment problems. *In addition:* By making a deposit, payment, or by sending an email confirmation to start the project, the Customer agrees to give Multimedia and Development llc "on demand" access to the Customer's online media content or web site, and further agrees that Multimedia and Development llc shall have the right to remove the online content or web site from public posting for failure to adhere to the terms and conditions, including violation of any licensing agreements or failure to pay fees duly assessed.

**14. Post-Placement Alterations (web).** Multimedia and Development llc cannot accept responsibility for any online alterations caused by a third-party occurring to the Customer's pages once installed. Such alterations include, but are not limited to additions, modifications, or deletions.

**15. Indemnity (online media).** The Customer agrees to indemnify and hold harmless Multimedia and Development llc from any and all claims resulting from the Customer's use of Multimedia and Development llc's services or goods and the project's contents which cause damage to the Customer or a third-party in addition to the following: Multimedia and Development llc attempts to maintain the use of state of the art encryption devices on our web site and/or we may contract with third-party credit card services when credit card numbers are transmitted and verified to us for payment for our goods and services via the internet. However, because the internet and internet technology is an on-going science, there may be on rare occasions where personal information may have been obtained through illegal means and devices. Multimedia and Development llc will cooperate with the law to the fullest extent to prosecute or assist in the prosecution of anyone who has unlawfully obtained any client information for criminal activities. If the Customer is concerned with making online payments, we do offer other payment forms as described in paragraph #2 of these terms and conditions of service.

**16. Disclaimer.** Multimedia and Development llc makes no warranties of any kind, whether express or implied, for the web site, web development, graphic design, multimedia, editorial, or development of services or goods it provides unless a separate agreement and/or payment is obtained for site maintenance or other services or goods is provided. Multimedia and Development llc also disclaims any warranty of merchantability or fitness for a particular purpose. Multimedia and Development llc will not be responsible for any direct, indirect or consequential damages which may result from the use of its services or goods including loss of data resulting from delays, non-delivery or interruption in service. The Customer acknowledges and agrees that Multimedia and Development llc cannot guarantee the absence of internet or other technical service interruptions caused by acts of God or other circumstances beyond its control.

**17. General.** These terms and conditions of service is a contractual addendum to the signed project proposal or estimate which supersedes all previous representations either verbally expressed or implied, and shall prevail notwithstanding any variance with terms and conditions of any order submitted, save only for any exceptions specifically outlined in the project proposal or estimate. The Customer's signature on a mailed or faxed document of the project proposal, estimate, and/or payment of any form to Multimedia

and Development llc constitutes agreement to and acceptance of these terms and conditions. **Web:** Multimedia and Development llc reserves the right to change the terms and conditions of the acceptance of future orders for authoring and placement of the Customer's web site, data, files, custom artwork, graphic logos, copy or development services at any time, and will provide the Customer with a copy of the updated changes within fifteen (15) business days.

**18. Taxes.** Customer will pay and indemnify and hold Multimedia and Development llc harmless from any and all taxes associated with or arising from the Customer's use of the services, including any penalties and interest and any costs associated with the collection or withholding thereof.

**19. Governing Law.** All ownership and copyright(s) is applicable, governed and protected by the United States and International copyright laws. The terms and conditions outlined above shall also be governed where applicable by law in the United States, and by the laws of the State of Georgia which shall claim venue and jurisdiction for any legal motion or claim arising from this agreement. All or parts of these terms and conditions is void where prohibited by law.

Comments or questions, please contact Multimedia and Development llc at the contact information below:

Postal mail:

Multimedia and Development llc  
2481 Post Village Drive  
Smyrna, Georgia 30080

Office: (678) 556-9900 fax ext. 9

Email:

- Coretta Y. Herod, Corporate Managing Member: [Coretta@MandD.org](mailto:Coretta@MandD.org)
- To request a proposal or estimate please email: [Quotes@MandD.org](mailto:Quotes@MandD.org)
- Billing, project costs or invoice disputes can be directed to: [Invoices@MandD.org](mailto:Invoices@MandD.org)