Langlois Internet Computing

http://www.langlois-comp.com

The purpose of this Agreement (hereafter referred to as the "**Agreement**") is to set out the arrangement under which the Host will provide a Hosting Service on behalf of the Client.

1. Definitions

Unless expressly stated otherwise the following definitions shall apply to the terms used in this Agreement:

"**Additional Fees**" means any charges other than the Service Fee in relation to the Hosting Service provided by this Agreement

"**Backup**" means the copying of physical or virtual files or databases or account settings or e-mails to a secondary location outside the Hosting Service for preservation in case of equipment failure or other catastrophe;

"**Confidential Information**" means all information passing from one party to the other party relating to the business of the disclosing party, including but not limited to trade secrets, drawings, know-how, techniques, source and object code, business and marketing plans and projections, arrangements and agreements with third parties, customer information and customer information proprietary to customers, formulae, suppliers, concepts not reduced to material form, designs, plans and models but excludes information:

(a) which is in or becomes part of the public domain other than through breach of this Agreement;

(b) which the receiving party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the disclosing party or its representatives; or

(c) which the receiving party acquires from a third party entitled to disclose it;

"**Client Content**" means all Client Materials and electronic data placed on the Host's Server under this Agreement;

"**Commencement Date**" means the date of this Agreement;

"**Computer Virus**" means any programmes or data incorporated into software or data that disrupts the proper operation of a computer hardware system or the associated software;

"**Downtime**" means any period during which the Web Site is unavailable due to equipment failure or loss of all Internet connectivity to the Server.

"**Hosting Service**" means the service provided to the Client by the Host to enable the hosting of the Client's Web Site on the Server, this service is detailed in schedule 1 attached to this Agreement and deemed to form part of it;

"**Inappropriate Content**" means any content that is pornographic, defamatory, misleading or deceptive, immoral, illegal, outside the stated charitable aims of the Host, contains political or religious activism, or is in breach of any third party's rights;

"**Intellectual Property**" means all intellectual property rights relating to or owned by either party to this Agreement anywhere in the world (including present and future intellectual property rights) including without limitation confidential information, business names, domain names, copyright, database rights, patents, trade or service marks, designs, software, software programs and source code and all variations, modifications or enhancements to each of them together with any application or right to apply for registration of those rights;

"**Initial Period**" means the first twelve (12) months of this Agreement;

"**Materials**" means all materials owned by a party used in the provision of the Hosting Service, including software programs and source code;

"**On-Line Conduct Policy**" means the policy setting out the terms and conditions on which the Client agrees to utilise the Host's network, systems, products and services attached to this agreement as schedule 2 and deemed to form part of it;

"**Personnel**" means any employees, agents or contractors of either party;

"**Server**" means the computer server equipment operated by the Host in connection with the provision of the Hosting Service;

"**Service Failures**" means a hardware and/or software failure of the Host's Server on which the Client's Hosting Service runs, leading to Downtime and/or data loss, this only covers the Server hardware and Server software used by the Host to run the Client's Hosting Service, and excludes all other hardware and software including any software installed by the Client under their Hosting Service;

"**Service Fee**" means the total amount charged by the Host as set out in schedule 1 for the provisions of the Hosting Service under clause 8 of this Agreement. The Host may change the Service Fee amount charged by this Agreement after the Initial Period as described under clause 8;

"**Term**" shall mean the period between the Commencement Date and the end date of this Agreement as specified in clause 7 of this Agreement;

"**Web Site**" means the Client's Web Site data (<CLIENT'S DOMAIN NAME(S) HERE>) as hosted on the Host's Server, and forms part of the Client Content.

2. Interpretation

2.1 In this Agreement:

a.   a reference to any document is a reference to that document as varied, novated or replaced from time to time;
b.   the singular includes the plural and vice versa;
c.   a reference to a gender includes all other genders;
d.   a reference to a person or entity includes a natural person, a partnership, a corporation, trust, association, an unincorporated body, authority or other entity; and
e.   a reference to a person includes that person's legal personal representative, successors and permitted assigns;

unless the context otherwise requires.

2.2 Headings have been inserted for convenience only and shall not affect the interpretation of this Agreement.

3. Provision of hosting services

3.1 The Host will provide the Hosting Service to the Client on the terms and conditions of this Agreement. No third-party access is allowed to the Hosting Service unless agreed in writing by both parties prior to commencement of the hosting contract.

4. Availability

4.1 The Client acknowledges that the Host's Server may from time to time be inoperative or only partly operational as a consequence of mechanical breakdown, maintenance, hardware or software upgrades, telecommunication connectivity problems or other causes.

4.2 The Host agrees to rectify Service Failures and to restore the Hosting Service to operational capacity as soon as reasonably practicable; this does not cover the restoration of any Client Content. Where Backups of the Client Content exist (clause 6.5) the Host will attempt to restore the Client Content from the Backup. However, the Host makes no promises that the Client Content will be able to be restored in this manner.

5. Limitation of liability

5.1 The Host gives no condition, warranty or undertaking and makes no representation to the Client about the suitability of, or fitness of the Hosting Service for the Client's purposes other than those conditions, warranties, undertakings or representations expressly set out in this Agreement.

5.2 With the exception of any rights which the Client may have under applicable law, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from these Terms to the fullest extent permitted by law.

5.3 Nothing in this Agreement excludes or limits the liability of the Host for:

i.   death or personal injury caused by the Host's negligence; or
ii.   fraudulent misrepresentation.

5.4 Subject to sub-clauses 5.2 and 5.3:

a.   The Host's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Service Fee paid to the Host by the Client in terms of this Agreement; and
b.   The Host shall not be liable to the Client or any third party for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever or howsoever caused which arise out of or in connection with the Agreement, or for loss of profit, loss of business, loss of data, depletion of goodwill or loss occurring in the normal course of business or otherwise.

6. Client content

6.1 The Host will not be responsible for the accuracy and functionality of the Client Content. The Client will indemnify the Host for any claims made against the content of the Web Site.

6.2 If the Host reasonably forms the view that the Client content of any Web Site may be Inappropriate Content, the Host may remove that Client Content from the Web Site and shall thereafter notify the Client of its removal in respect of all losses of whatsoever nature incurred by the Host as a result of the Client Content of the Web Site being Inappropriate Content.

6.3 The Host will have no liability for any loss or damage to any data stored on the Hosting Service, Server or any other of the Host's facilities.

6.4 The Client is responsible for creating and maintaining Backups of the Client Content.

6.5 The Client agrees to abide by any additional conditions as stated under schedule 1.

7. Term

This Agreement will commence on the Commencement Date and will subsist for an Initial Period unless terminated earlier in accordance with its terms (clause 17). Following the Initial Period, this agreement shall automatically continue in force unless terminated in accordance with its terms (clause 17) or by either party on giving the other thirty (30) days written notice.

8. Charges and payment

8.1 The Host will charge the Client the total of the Service Fee for the provision of the Hosting Service as defined by this Agreement. The Client will pay the Service Fee within thirty (30) days after the date of the Host's invoice.

8.2 Any Additional Fees will be agreed upon in writing in advance between the parties and invoiced separately. The Client shall reimburse the Host for any such Additional Fees and out of pocket expenses reasonably incurred by the Host.

8.3 The Client will pay any Additional Fees within thirty (30) days after the date of the Host's invoice.

8.4 If the Client is in arrears in any payment due to the Host under this Agreement, the Client will pay, in addition to the arrears, interest at the rate of four per centum (4%) per annum above The Royal Bank of Scotland plc (trading as NatWest) interest base rate on all arrears, calculated on a daily basis from the date the default occurs until payment is made in full as well before as after judgment.

8.5 Without limiting any other right or remedy available to the Host, the Host may, on giving seven (7) days notice, and without having to account for or to repay any money previously paid to it pursuant to the terms of this Agreement, refuse to commence, complete or deliver any work or otherwise comply with the provisions of this Agreement on the Host's part to be observed or performed in the event the Client:

a. fails to pay any sums due to the Host under this Agreement; or

b. otherwise defaults in the due observance and performance of this Agreement.

8.6 The Host may, after the Initial Period and on giving thirty (30) days notice in writing, change the Service Fee amount charged by this Agreement.

9. Ownership

9.1 The Parties acknowledge that this Agreement does not have the effect of transferring the ownership of any Intellectual Property.

9.2 Any Intellectual Property owned by either party and required for the performance by the other party of its obligations under this Agreement shall be licensed to that other party on a non-exclusive, royalty-free basis for the sole purpose of fulfilling that party's obligations under this Agreement and for the period during which the use of that Intellectual Property by that party pursuant to this Agreement is required.

9.3 Where the Client places or installs their own Client Content on the Host's Server, the Client is responsible for ensuring that they have secured all necessary licences required for the performance by the Host of its obligations under this Agreement and for the period during which the use of those rights by the Host pursuant to this Agreement is required.

10. Domain name registration

On request, and subject to Additional Fees, the Host may register domain names on behalf of the Client. At no time does the Host represent that any particular domain name is available for registration. The registration and use of domain names is subject to the terms and conditions of the relevant naming authority. The contract for registration is between the Client and the naming authority. If payments are not received in respect of domain name registrations the Host may cancel or retain them. The Host gives no warranty that the domain name will not infringe the rights of any third party. The Client is responsible for ensuring they have rights to use domain names that are registered through the Host and the Client hereby indemnifies the Host for any loss of whatsoever nature incurred by the Host in that regard. In the event of a dispute between the Client and third parties in respect of the rights to domain names, the Host retains the right to suspend or cancel disputed domain names. Unless otherwise stated the Client has full responsibility for the renewal of the domain name.

11. On-line conduct policy

11.1 The Client acknowledges that it will comply with the On-Line Conduct Policy within schedule 2 and as published from time to time on the Host's Web Site.

11.2 The On-Line Conduct Policy is a standard policy for the conduct of the Host's business and is necessary for the orderly and efficient provision of the Hosting Service to the Client.

11.3 In the event of the Client breaching the On-Line Conduct Policy, the Host retains the right to suspend or terminate the provision of the Hosting Service and shall within seven (7) days thereafter notify the Client of such suspension.

12. Equipment and access

12.1 The Client must provide, at its own cost, all telecommunications services, computers and other equipment or services necessary to enable it to have access to the Hosting Service. The Client must comply with all applicable legal requirements, rules and regulations that apply to the communications means by which the Client obtains access to the Hosting Service.

13. Personnel and sub-contractors

13.1 The Host may in its absolute discretion sub-contract the performance of any of its obligations under this Agreement.

14. Data protection

14.1 Both the Host and the Client agree to comply with respective obligations under the Data Protection Act 1998 (hereafter the "**Act**"), and any updates to this Act, as applicable to personal data that it controls or processes as part of, or in connection with, its use or provision of the Hosting Service. The Host does not take responsibility for the protection of personal data held by the Client under the Hosting Service. Specifically, but without limitation, the Client must comply with the Act as it relates to personal data the Client stores or transfers using the Hosting Service.

15. Warranties

15.1 Each party warrants that:

a.   it has authority to enter and to perform its obligations under this Agreement; and
b.   it has the ability to perform its obligations under this Agreement.

15.2 The Client warrants that:

a.   the use by the Host of any works or Client Content submitted by the Client to the Host under this Agreement will not infringe the rights of any person or contravene any law;
b.   at the time of entering into this Agreement it is not relying on any representation made by the Host which has not been expressly set out in this Agreement;
c.   it will take all reasonable steps to ensure that any software used in connection with Hosting Service and any material or data provided to the Host will be free from any Computer Virus and will not damage or corrupt any other data or system;
d.   it is solely responsible for communicating with persons who maintain or access its Web Sites and that it will not divert any complaints or concerns from such persons to the Host;
e.   where the Client allows its own customers to maintain details within the web hosting space provided as part of the Hosting Service, the Client remains fully bound by this contract and is responsible for the activities and actions of such persons.

15.3 The Host shall not be liable for defects resulting from improper use of the Hosting Service by the Client or by another third party.

16. Indemnity

16.1 Each party ("the first party") indemnifies and undertakes to keep indemnified the other party, its officers, servants and agents ("the second party") against any costs or expenses (including the cost of any settlement) arising out of any claim, action, proceeding or demand that may be brought, made or prosecuted against the second party by any person arising out of or as a consequence of an unlawful or negligent act or omission of the first party, its officers, servants or agents in any way connected with this Agreement whether arising from any failure by the first party to comply with the terms of this Agreement or otherwise.

16.2 The indemnity extends to and includes all costs, damages and expenses reasonably incurred by the second party in defending any such action, proceeding, claim or demands.

17. Termination

17.1 The Host may terminate this Agreement by notice in writing to the Client in the event that:

a.   the Client fails to pay any amount to the Host due under this Agreement and does not make that payment within thirty (30) days after receiving notice requiring the Client to do so;
b.   the Client fails to perform any of the obligations on its part to be observed or performed pursuant to the On-Line Conduct Policy, or
c.   the Client fails to perform any of the obligations on its part to be observed or performed pursuant to this Agreement, or
d.   any of the warranties or representations made by the Client contained in this Agreement are false or inaccurate in any material way, or
e.   The Palaeontological Association Council decides to cease the Hosting Service.

17.1 The Client may terminate this Agreement by notice in writing to the Host in the event that:

a.   the Client wishes to cease use of the Hosting Service and all outstanding Service Fee and Additional Fee have been paid to the Host.

17.3 Either party shall be entitled to terminate this Agreement forthwith by notice in writing to the other if the other party shall:

a.   commit any material breach of any of its obligations under this Agreement, or

b. pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect, or
c. make any voluntary arrangement with its creditors or become subject to an administration order, or
d. have a receiver or administrative receiver appointed, or
e. cease or threaten to cease to carry on business.

17.4 This contract replaces any previous hosting agreements between the Host and the Client.

18. Confidential information

18.1 Each party may use the Confidential Information of a disclosing party only for the purposes of this Agreement and must keep confidential all Confidential Information of each disclosing party except to the extent (if any) the recipient of any Confidential Information is required by law to disclose the Confidential Information.

18.2 Either party may disclose Confidential Information of the other party to those of its employees and agents who have a need to know the Confidential Information for the purposes of this Agreement.

18.3 All documents and other materials containing Confidential Information of either party will be returned to that party immediately upon completion of Hosting Service.

18.4 The parties' obligations to keep information confidential will survive the termination of this Agreement.

18.5 The obligations of confidentiality under this Agreement do not extend to information that:

a. was rightfully in the possession of the receiving party before any negotiations leading to this Agreement;
b. is, or after the day this Agreement is signed, becomes public knowledge (otherwise than as a result of a breach of this Agreement); or
c. is required by law to be disclosed.

19. Force majeure

19.1 "Force Majeure" means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, transportation embargo, failure or delay in transportation, including without limitation where the Host's Hosting Service ceases to be entitled to access the Internet or ceases to have access to the Internet for whatever reason, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.

19.2 If a party is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure.

19.3 As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under this Agreement.

20. Default and Remedies

20.1 Client Default - the occurrence of any one of the following events shall constitute a default of the Client:

a. the abandonment of the Web Site for a period of consecutive six (6) months;
b. failure to pay the Service Fee due;
c. failure in the performance of any of the Client's obligations in this Agreement.

20.2 Host Default - the following event shall constitute a default of the Host:

a. fails to perform or observe any condition or obligation of this Agreement to be performed by the Host within thirty (30) days following written notice to the Host of such failure, provided that if the nature of such default reasonably requires more than thirty (30) days, the Host shall not be in default hereunder if the Host has promptly commenced such cure and is diligently pursuing the same.

20.3 Host Remedies – in the event of Client default the Host has the following remedies:

a. terminate this Agreement;
b. cure such event of default for the Client at the Client's expense;
c. pursue any other remedy now or hereafter available to the Host under the law.

20.4 Client Remedies - the event of Host default the Client has the following remedies:

a.   use any remedies available to it at law.

20.5 Mitigation - both parties agree to mitigate their damages upon default.

21. Notification

21.1 Any notices given by the Host to the Client may be given by e-mail, facsimile or letter.

21.2 The Client shall be responsible for ensuring that the Host has been provided with up to date information to allow the Host to serve notices in terms of Clause 20.1

22. Jurisdiction

The parties agree that this Agreement shall be subject to the Laws of the United States of America and the State of California and to the exclusive jurisdiction of the US Federal and State Courts.