

## Terms and Conditions

### AGREEMENT TO PROVIDE SERVICES

THIS AGREEMENT is between you ("the Client") and Keith Simister IT Services located at 28 Eaves Knoll Road, New Mills, High Peak, SK22 3DN, United Kingdom ("KSITS").

### INTRODUCTION

KSITS provides IT Support and Consultancy, designs websites and arranges hosting and domain name registration for those websites. This Agreement contains the terms and conditions which shall govern the relationship between the Client and KSITS. Until accepted by KSITS, this Agreement constitutes the Client's request to KSITS to provide the Services (as defined below) on the terms and conditions set out herein. Further details of the services provided can be found at [www.simister.com](http://www.simister.com).

### IT IS AGREED THAT:

#### 1 DEFINITIONS

1.1 In this Agreement, the following expressions shall have the following meanings unless the context otherwise requires:

'Customer Software' means the software provided by the Client to KSITS to enable it to or assist it in providing any Services;

'Domain Name' means the domain name which the Client wishes to register, display and exploit on the internet;

'Domain Name Services' means the domain name services specified in Clause 3;

'Effective Date' means the date of acceptance of the Agreement by KSITS;

'Fees' means the registration, renewal, consultancy, design and programming and/or other fees payable by the Client to KSITS in respect of the provision of the relevant Services;

'Intellectual Property Rights' means all copyright, trade marks, service marks, patents, design rights and any other intellectual property right (whether registered or not);

'Information' means the information provided by the Client relating to the Domain Name, the Services or this Agreement submitted by the Client to KSITS;

'Registry' means the relevant domain name registry with whom KSITS arranges to register the Domain Name;

'Services' means Website Design Services, Domain Name Services, Website Hosting Services, IT Consultancy Services and any other services posted on the KSITS Site as selected by the Client and which the Client wishes KSITS to provide;

'KSITS Site' means the KSITS web site located at <http://www.simister.com> and accessible by that or any other URL.

"the Third Party Software" means the "open source" operating and applications software made available by third party software vendors;

"the Website" means the website or sites in respect of which KSITS provides Website Design and/or Website Hosting Services as specified in Clause 4;

"Website Hosting Services" means the website hosting services specified in Clause 4.

1.2 The headings contained in this Agreement are for reference only and shall not affect their interpretation.

1.3 KSITS may at any time correct any typographical or other errors or omissions in any document posted on the KSITS Site relating to the provision of the Services, the Policies or otherwise without any liability whatsoever to the Client.

## 2 SUPPLY OF SERVICES

2.1 KSITS will provide the Services to the Client subject to the terms and conditions contained in this Agreement. Any changes or additions to the Services or this Agreement must be agreed in writing by KSITS and the Client.

2.2 KSITS will provide the Services exercising reasonable skill and care but otherwise it will have no obligation, duty or liability to the Application in contract, tort, for breach of statutory duty or otherwise. In the event of material breach of this clause, the Client's only remedy against KSITS will be to terminate this agreement and a right to recover actual damages suffered which will not exceed the total amount of fees paid by the Client to KSITS for provision of the services affected by KSITS's breach, less any sums chargeable in respect of usage in accordance with these terms and conditions. This does not affect the Client's statutory rights.

2.3 KSITS will commence performance of the services following despatch of its acceptance of the Client's offer and the Client agrees and acknowledges that he will not be able to exercise any right he may have to cancel this agreement under the Consumer Protection (Distance Selling) Regulations 2000 (as amended or modified).

2.4 KSITS may modify, amend and/or revise the Policies from time to time and the Client is responsible for reviewing the Policies on a regular basis. Any modifications, amendments and/or revisions to the Policies necessary to comply with any applicable statutory or other legal requirements will be effective immediately on the date of posting on the KSITS Site. All other modifications, amendments and/or revisions to the Policies will be effective twenty (20) days after the date of posting on the KSITS Site and will have retrospective effect.

## 3 DOMAIN NAME SERVICES

3.1 KSITS will provide any Domain Name Services on an "as available" basis. The acceptance by KSITS of the Client's application to register the Domain Name is not an acknowledgement by KSITS of the availability of the Domain Name and such application will be subject to the successful registration of the Domain Name at the Registry which shall be signified by the Domain Name being displayed on the Registry's WHOIS directory as being registered to the Client.

3.2 In the event the Domain Name is not successfully registered with the Registry or if KSITS declines to accept the Client's order for whatever reason, KSITS will refund the Fees to the Client. KSITS will not be liable to the Client for any loss or damage howsoever arising or resulting from any inability to register the Domain Name or by any refusal by KSITS of the Client's Order. Please note: KSITS will not be liable to refund the fees to the Client if, for any reason after registration, the Client is forced to relinquish the domain name or if the Client cancels his order.

3.3 The Client agrees and acknowledges that registration of and use of the Domain Name may be subject to the Registry's own acceptable use policies, rules or other terms and conditions. By submitting an order to KSITS, the Client agrees to be bound by any such policies, rules or other terms and conditions and to fully and effectively indemnify KSITS in respect of any and all losses, costs, expenses or liability suffered or incurred by KSITS in the event of or as a result of or arising out of any breach of this clause 3.3. Upon successful registration of the domain name, it is the Client's responsibility to review and familiarise himself with the relevant registry's policies, rules and other terms and conditions.

3.4 KSITS's sole obligation in relation to renewal of domain names, and then only for so long as this agreement for the provision of domain name services remains in force, shall be to issue one reminder to the Client at its last notified email address as to the renewal date of the relevant domain name. KSITS shall have no obligation in relation to renewal other than as specified above, and shall have no liability to the Client for any failure of the Client to renew any domain name, whether or not such email notification is delivered.

3.5 Email forwarding and web forwarding are free services provided with domain registration at the discretion of KSITS. KSITS is not responsible for any failure in these services or the loss of any emails.

3.6 In the event of any conflict between this Agreement, and the Registry terms and conditions, the following precedence will apply:

- (a) the Registry's terms and conditions;
- (b) this Agreement

#### 4 WEBSITE HOSTING SERVICES

4.1 In return for the payment of the Website Hosting Fees and compliance by the Client with the terms of this Agreement, KSITS agrees to provide a hosting service via a third party, in respect of the Website for the term specified.

4.2 If the Client shall notify KSITS of any failure of or defect in any Server, KSITS's sole obligation shall be to notify the maintainer of the Server of the failure or fault.

4.3 The Client acknowledges and agrees that KSITS may monitor use of the Servers/Website, traffic to and there from and content thereof.

#### 5 SOFTWARE

5.1 Where the Client requests KSITS to provide any Third Party Software, the Third Party Software is provided on as "as is" and "as available" basis. KSITS gives no warranties or other undertakings of any kind in relation to the Third Party Software. Where any licence is needed for any Third Party Software, the Client agrees that such software will not be provided until the Client has paid any necessary licence and/or other fees and associated costs, and that it will comply with the terms of any software licence.

5.2 In relation to the Customer Software, the Client warrants and undertakes to KSITS that it is entitled to provide the Customer Software to KSITS to use the purpose of providing the Services, that the Customer Software is free from viruses and any other disabling devices, that if any licence fee shall be payable in respect of such use, the Client will bear the same, and that it will, prior to commencement of use of the Customer Software by KSITS, provide to KSITS copies of any licence terms with which KSITS is required to comply. If the licence terms are, in the sole discretion of KSITS, onerous, KSITS shall be entitled to decline to use the Customer Software, without liability of any nature to the Client. The Client will fully and effectively indemnify KSITS, its agents and contractors from and against any liability, loss or claim whatsoever and all costs and expenses (including, without limitation, legal costs and expenses) incurred in relation to or arising out of any breach of the Client's obligations under this Clause 5.

#### 6 OBLIGATIONS OF THE CLIENT

6.1 The Client will pay to KSITS the Fees applicable at the time the Client submits the order or at the time of the renewal of this Agreement as provided in clause 8 or as otherwise specified as appropriate in the KSITS Site. KSITS reserves the right at any time to revise the Fees without notice.

6.2 The Client undertakes and warrants to KSITS that the Information is true, accurate and complete in all material respects. The Client also undertakes and warrants that he will maintain and keep the Information true, accurate and complete in all material respects by immediately notifying KSITS of any change that is required to be made to the Information (including but not limited to informing KSITS of any changes in the Client's address and/or contact details).

6.3 The Client undertakes and warrants to KSITS as follows:

- (a) to the best of the Client's knowledge, information and belief, neither the registration of the Domain Name nor the provision of the Services nor the manner in which they are to be directly or indirectly used will infringe the Intellectual Property rights of any third party;
- (b) that the Client has the full right, power, legal capacity, ability and authority to enter into this Agreement;
- (c) that use of the Domain Name and the Services will be strictly subject to the terms and conditions of this Agreement and the policies, rules and terms and conditions of the Registry, all of which may be amended, revised or modified from time to time and it is the Client's responsibility to review these documents on a regular basis;
- (d) the Client will use the Services and will display and exploit the Domain Name or the Services in good faith;
- (e) the Client will fully comply with any Terms and Conditions of the Registry;
- (f) the Client will not make use of the Services, nor operate, display or exploit the Domain Name in any way so as to infringe any subsisting right of any third party.
- (g) the Client will ensure that any content (including, but not limited to, graphical images, trade marks, textual content and multimedia content) does not infringe the Intellectual Property Rights or any third party and agrees that, should any such content be later found to infringe such rights, the Client will be responsible for any fees incurred in removing or revising such content.

6.4 The Client understands and agrees that it is its responsibility to ensure that all data stored on any servers is backed up as is necessary for the Client. Unless the Client has otherwise agreed in writing with KSITS, KSITS will not be responsible for any losses of whatever nature caused by loss or corruption of data including but not limited to emails and online orders.

6.5 The Client understands and agrees that use of the Services, use of the Domain Name and access to any website located at the Domain Name address by third parties will be subject to the local laws of the country where such third party is resident and the Client warrants to KSITS that he will use the Services and will operate, display and exploit the Domain Name, the website, any website or other functions operated using the Servers and any other websites located at the Domain Name address in accordance with all relevant national and international laws and regulations.

6.6 The Client will be responsible for and will fully and effectively indemnify and keep indemnified KSITS, its agents and contractors from and against any liability, loss or claim whatsoever and costs and expenses (including, without limitation, legal costs and expenses) incurred in relation to or arising as a result of any breach of the Client's obligations under this clause 6 by either the Client, its employees, agents or contractors.

## 7 LIMITATION OF LIABILITY

7.1 The Client acknowledges that the Fees for the Services are calculated on the basis of the limitations on liability as set out in this Agreement and that, accordingly, the limitations on liability set out in this Agreement are reasonable in the circumstances. If requested by the Client, KSITS will provide alternative Fee quotations, based upon acceptance by KSITS of higher levels of liability, such level of liability to be specified in KSITS's quotation.

7.2 Subject as expressly provided to the contrary in this agreement and except in respect of fraud, or death or personal injury caused by the negligence of KSITS, KSITS will not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this agreement for loss of data, profits or contracts nor for any indirect, incidental, special or consequential loss or damage, costs, expenses or other claims for compensation relating to the use or the inability to use the domain name, the servers, the web-site or in any other way related to or in connection with the provision of the services, whether caused by the negligence of KSITS, its agents or otherwise and whether such action arises in contract, tort or otherwise.

7.3 KSITS will not be liable for any damages or losses whether direct or indirect that the Client may suffer as a result of service or systems failure whether caused by systems or services under KSITS's control or otherwise, including but not limited to domain name system failure, server failure, access delays or interruptions, data non-delivery or mis-delivery, any acts of God, delays in provision of the services, breaches of security or unauthorised use of the domain name, web-site or server arising from "hacking" or otherwise, even if KSITS has been advised of the potential for such damages and even if KSITS may reasonably foresee such possible damages.

7.4 KSITS is not liable for the loss of any emails sent to mailboxes of any configuration or sent from email accounts related services provided by KSITS. KSITS is not responsible for any email stored in mailboxes provided by KSITS. Client only has an expectation of preserving email downloaded from mailboxes provided by KSITS.

7.5 In no event shall the liability of KSITS under this agreement exceed the aggregate sums specified in clause 2.2.

7.6 While KSITS makes regular maintenance updates to its systems and services, it will not be liable for any damages or losses whether direct or indirect that the Client may suffer as a result of any virus, Trojan horse or other disabling device that affects services or systems whether under the control of KSITS or otherwise.

7.7 The Client will indemnify KSITS and keep KSITS fully and effectively indemnified on demand against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands proceedings and actions which KSITS may sustain or incur in relation to the domain name the hosting service, the server provision and/or any other services brought or threatened against KSITS by any third party, except in the event of death or personal injury caused by the negligence of KSITS.

7.8 Subject to clause 11.2, the parties expressly exclude any rights of third parties who may otherwise be entitled to enforce the terms of this Agreement as if they were a party to it or otherwise able to rely on the provisions of the Contracts (Rights of Third Parties) Act 1999 as enacted or modified from time to time.

7.9 Subject as expressly provided in this Agreement, and except where the Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

7.10 Subject to clause 2.3, where the services are sold under a consumer transaction (as defined by the Consumer Transaction (Restrictions on Statements) Order 1976) the statutory rights of the Client are not affected by the terms and conditions of this agreement.

## 8 TERM, AND TERMINATION AND RENEWALS

8.1 This Agreement shall come into force on the Effective Date and subject to earlier termination as provided under this Agreement, will continue for the period specified in the service agreement.

8.2 Approximately two months before the expiry of the term, KSITS shall submit to the Client a renewal notice accompanied by an emailed invoice. If the Client pays the invoice prior to the expiry of the term, this Agreement will continue in force for the further period specified in the renewal notice. If the Client has not paid the invoice by the expiry of the term, this Agreement shall automatically terminate, and KSITS shall cease to provide any further Services to the Client without any liability to the Client. For the avoidance of doubt, this may include termination of Domain Name and/or Website Hosting, and termination of access to the Servers.

8.3 KSITS shall be entitled to terminate this Agreement immediately without notice if the Client is in material breach of any obligation under this Agreement. A material breach includes but is not limited to:

- (a) if the Client provides materially false, inaccurate, incomplete or misleading information; or
- (b) if the Client fails to correct material errors or omissions relating to the Information resulting in the Information becoming false, inaccurate, incomplete or misleading.

8.4 KSITS shall be entitled to terminate this Agreement immediately upon written notice if:

- (a) the Client is in breach (other than material breach) of any obligation under this Agreement and, in the case of breach capable of remedy, it shall not have been remedied by the Client within thirty (30) days following receipt of a written notice from KSITS specifying the breach and requiring its remedy; or
- (b) the Client becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any composition with creditors, or has an order made or resolution passed for it to be wound up (otherwise than for the purposes of a scheme for solvent amalgamation or reconstruction) or, in the case of an individual or partnership, becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.

8.5 The Client shall be entitled to terminate this Agreement immediately upon giving notice to KSITS if:

- (a) KSITS is in material breach of any obligation under this Agreement and, in the case of a breach capable of remedy, it shall not have been remedied by KSITS within thirty (30) days following receipt of a written notice from the Client specifying the breach and requiring its remedy; or
- (b) KSITS becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any composition with creditors, or has an order made or resolution passed for it to be wound up (otherwise than for the purposes of a scheme for solvent amalgamation or reconstruction).

8.6 The Client acknowledges that termination of this Agreement for any reason will result in KSITS ceasing to provide the Services, with all the consequences that flow from such cessation, including, but not limited to, deletion of hosting account(s) and mailboxes.

8.7 Termination of this Agreement by either party pursuant to clause 8.2, 8.3 or 8.4 or 8.5 (as appropriate) shall be without prejudice to the accrued rights of either party.

## 9 DATA PROTECTION

9.1 Any Personal Data will form part of the Client's customer records and KSITS will be entitled to use it for all purposes connected with the provision of the Services, such Services including, but not limited to, the provision of the Personal Data to the Registry.

9.2 KSITS may wish to use the Personal Data to send the Client information about its Services and/or products. If the Client does not wish to receive any such information, he may send a notice to KSITS indicating that he does not wish to receive such information.

## 10 TRANSFER REQUESTS

10.1 The Client may request KSITS to transfer technical control of the Domain Name to another service provider at any time during the term of this Agreement.

10.2 The Client understands and acknowledges that by submitting a request to transfer technical control of the Domain Name, the Client releases KSITS from all obligations, claims, liabilities and/or demands arising out of or in relation to the Domain Name Services under this Agreement.

10.3 On receipt of a transfer request, KSITS will use its reasonable endeavours to process such request but shall not be responsible for any delay in effecting such transfer.

10.4 KSITS shall not be obliged to process a transfer request until:

(a) the Client has provided all information necessary to effect such transfer; and

(b) the Client has paid all Fees in full

10.5 If the registration term of the domain has expired or is within 14 days of expiry the Client must pay a renewal fee to KSITS before the transfer request can be processed.

## 11 GENERAL

11.1 This Agreement including all the documents incorporated by reference within it constitutes the entire agreement between the Client and KSITS, supersedes any previous agreement or understanding and may not be varied except as provided for in this Agreement.

11.2 KSITS is entitled to assign this Agreement and all or any of its rights or obligations hereunder without the prior written consent of the Client. The Client is not entitled to assign this Agreement nor all or any of its rights or obligations hereunder without the prior written consent of KSITS.

11.3 Except where expressly provided to the contrary in this Agreement, any notice required or permitted to be given by either party to the other under this Agreement shall be in writing and delivered or sent by first class post to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the other party.

11.4 No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach of this Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.5 If any provision in this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected.

11.6 This Agreement shall be governed by and construed in accordance with English law and shall be subject to the non-exclusive jurisdiction of the English Courts.