

AGREEMENT – 97WEBSITES LIMITED

IT IS AGREED as follows:

1. Formation of an Agreement

This Agreement is formed and accepted when the first Order is placed for Services either via our website including but not limited to 97host.co.uk, in writing or telephone. The (“Supplier”) is 97Websites Limited whose registered office is at 48 Alderney House, Ferry Court, Cardiff, CF11 0JT who provides services as outlines in Schedule 1.

The (“Reseller”) is the person or company placing the order to the Supplier.

2. Definitions

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

“Commencement Date” the date the first order is placed;

“Customer Abandonment” Any or all of (1) when a Reseller for any reason fails to administer or provide the Service to a Reseller Client for a period of 30 consecutive days; (2) when a Reseller fails to respond to any reasonable request whether such request is made by the Supplier or a Reseller Client; and/or (3) a Reseller’s business ceases to trade for any reason and/or the Reseller enters into voluntary or compulsory liquidation, administration, receivership, bankruptcy, a creditor’s voluntary arrangement and/or an individual voluntary arrangement;

“First Level Support” the Support given to a Reseller Client in terms of administrative customer support, billing, general enquiries, sales enquiries, and other non-technical enquiries. This Support is provided by the Reseller;

“Normal Support Hours” are defined as Monday to Friday between the hours of 9am and 5pm with the exception of national UK holidays. This time is GMT/BST whichever is in effect;

“Order” an Order is a purchase of one or more items from Schedule 1 between the Reseller and the Reseller Client;

“Price List” the prices as notified by the Supplier to the Reseller from time to time as listed in Schedule 1;

“Services” the Services set out in Schedule 1;

“Reseller Client” an individual person or other legal entity who places an order for the Service with the Reseller;

“Second Level Support” the Support given by the Supplier to either a Reseller or, but on behalf of and as agent of the Reseller only and without intention to create direct contractual relations between the Supplier and a Reseller Client, a Reseller Client in relation to any technical aspect of the Services provided by the Supplier.;

“Support” the provision of a response to problems with the Services by telephone, electronic mail or letter, the method of such response being in the Supplier’s sole discretion;

3. **Appointment and Licence**

- 3.1 The Supplier appoints the Reseller as a non-exclusive reseller of the Services to the Reseller’s Clients and the Reseller agrees to act in that capacity subject to the terms and conditions of this Agreement.
- 3.2 The Supplier, in consideration of the Reseller’s obligations under this Agreement, grants to the Reseller a personal, non-transferable, non-exclusive right to use, sub-license, market and support the Services only to the extent strictly necessary for the Reseller to perform its obligations under this Agreement and for no other purpose whatsoever.

4. **Supplier’s General Obligations**

- 4.1 The Supplier agrees with the Reseller:
 - 4.1.1 to provide and promptly update information about the Services;
 - 4.1.2 to provide the Reseller with sales and marketing materials relating to the Services for the Reseller to use, reproduce and distribute solely for the purpose of the Reseller fulfilling its obligations under this Agreement;
 - 4.1.3 to provide Second Level Support to the Reseller or the Reseller’s Client in accordance with the Services;
- 4.2 The Supplier may from time to time add to the Services such other products and services as the Supplier may in its sole discretion deem appropriate.
- 4.3 The Supplier shall be entitled for any reason to reject any order or request for the Services submitted by the Reseller prior to any contract for the provision of any element of the Services being formed in accordance with clause 4.4 of this Agreement below.
- 4.4 The Supplier shall only be bound to provide any element of the Services in relation to any order or request submitted by the Reseller once it has accepted the said order or request which acceptance shall only be deemed to have occurred upon the Supplier taking and receiving cleared payment for any element of the Services by direct debit in accordance with clause 11.6 of this Agreement below.

5. **Reseller’s General Obligations**

- 5.1 The Reseller shall use their best endeavours to promote and market the

Services (all such promotion and marketing being at the Reseller's own cost), seek orders for the Services, and carry out the other duties specified in this clause using all due care and diligence and shall cultivate and maintain good relations with the Reseller Clients and potential such clients in accordance with good business practice.

- 5.2 The Reseller shall provide First Level Support to the Reseller Clients, and shall provide co-operation and assistance to the Supplier in the Supplier's efforts to provide Second Level Support.
- 5.3 The Reseller shall:
 - 5.3.1 obey the Supplier's reasonable instructions in relation to the intended use of the Services;
 - 5.3.2 supply to the Supplier such information and support as is deemed by the Supplier in its absolute discretion to be necessary to enable the Supplier to carry out its obligations under this Agreement;
- 5.4 The Reseller shall not:
 - 5.4.1 hold itself out, or permit any person to hold it out, as being authorised to bind the Supplier in any way nor do any act which might reasonably create the impression that it is so authorised;
 - 5.4.2 pledge the credit of the Supplier in any way;
 - 5.4.3 engage in any conduct which in the opinion of the Supplier is prejudicial to the Supplier's business or the marketing of the Services generally; or
 - 5.4.4 make or give any promises, warranties, guarantees or representations concerning the Services other than those contained in this Agreement;
- 5.5 The Reseller shall indemnify and keep indemnified the Supplier from and against any and all claims, liabilities, judgments, losses, expenses, fines, fees and/or costs incurred or suffered by the Supplier and whether made against the Supplier by a Reseller Client or any third party and which have resulted in part or whole from any breach of this Agreement by the Reseller including any act or neglect or default by or of the Reseller's agents, employees, licensees or Reseller Clients;

PROVIDED THAT such liability has not been incurred by the Supplier as a result of any default on its part in carrying out the terms of this Agreement.

6. Reseller's Support Obligations

- 6.1 The Reseller shall provide First Level Support for the Service to each Reseller Client.
- 6.2 The Reseller shall provide co-operation and assistance to the Supplier in the Supplier's efforts to provide Second Level Support. Such co-operation and assistance shall include but not be limited to:
 - 6.2.1 a reasonable level of responsiveness to the Supplier's requirements and communications;
 - 6.2.2 the timely transmittal and release to the Supplier of appropriate and accurate documentation and information;

- 6.2.3 the prompt review and analysis of the work performed by the Supplier;
and
- 6.3 the making available of facilities (including but not limited to remote and/or on-site access to all of the Reseller's hardware and software whether owned by the Reseller or leased or licensed by the Reseller from third parties) and personnel to assist the Supplier when and to the extent as is reasonably requested by the Supplier.

7. **Supplier's Support Obligations**

- 7.1 Subject to the terms of this Agreement and unless otherwise agreed in writing between the parties the Supplier shall provide Second Level Support to the Reseller during the Normal Support Hours in respect of the Services.
- 7.2 The Supplier shall not be obliged to provide Second Level Support to the Reseller Client requiring that Second Level Support if any payment by the Reseller is overdue in respect of that Second Level Support.
- 7.3 the Supplier is obliged to supply Second Level Support only to the Reseller or, on behalf of and as agent of the Reseller, to the Reseller Client;
- 7.4 Upon reasonable request, the Reseller shall ensure that the Supplier's support personnel (whether employees or agents of the Supplier) are provided with the appropriate approvals, access information and remote electronic access, via internet link if necessary, for the purposes of providing Second Level Support.

The Supplier shall not be obliged to continue to provide Second Level Support in respect of the relevant Reseller Client if the Reseller cannot provide or obtain such approvals, information and access.

- 7.5 If the Reseller requests the Supplier to carry out a modification or enhancement to the Services which is outside the specifications set out in the Schedules hereto or supply any other consultancy or other services then the same shall be carried out under a separate professional services agreement to be agreed by the parties at the relevant time. The Supplier shall be under no obligation to agree to perform such work or enter into such supplemental agreement, however.

8. **(Further) Exclusions from Second Level Support**

- 8.1 The Supplier shall be under no obligation to provide Second Level Support in respect of:
 - 8.1.1 problems resulting from any modifications or customisation of the Services not made by or authorised in writing by the Supplier;
 - 8.1.2 any software other than that form part of the Services;
 - 8.1.3 use of the Services with any other software that the Supplier has not expressly authorised in writing to be used with the Services;

9. **Warranties and remedies**

- 9.1 The Supplier does not warrant that the functions of the Services will meet any particular requirements or that their operation will be entirely error-free or that all program defects are capable of correction or improvement. All other warranties including any implied warranties of merchantability, satisfactory quality or fitness for purpose or ability to achieve a particular result are hereby excluded to the fullest extent permitted by law. In the absence of fraud, no oral

or written information or advice given by the Supplier or its agents or licensees shall create a warranty or give rise to any other liability other than as is set out in this Agreement.

- 9.2 The Supplier itself does not provide any warranty in respect of any third party services or products. Where the Supplier supplies third party software or hardware, the Supplier will on written request, and in so far as it is reasonably able to pursuant to its own statutory, contractual and/or common law obligations to third parties, pass on to the Reseller the benefit of any third party warranty which would usually be supplied by a third party as is specified in the documentation provided with the third party product or services.
- 9.3 The Reseller agrees that its sole remedy in respect of any breach of this Agreement by the Supplier is that the Supplier will perform its obligations under this Agreement but if, in the Supplier's reasonable opinion, it is unable to provide such performance the Supplier will provide a refund of the Price for the relevant element(s) of the Services, provided such Price has been paid by the Reseller whereupon the contract between the Supplier and the Reseller in respect of that/those element(s) of the Services shall immediately and impliedly be terminated unless otherwise agreed in writing by the Supplier and the Reseller.
- 9.4 Any amount due to be paid by the Reseller to the Supplier pursuant to this Agreement shall be paid without any deduction, counterclaim or set-off whatsoever.

10. **Limitation of Liability**

- 10.1 In no event shall the Supplier be liable to the Reseller for any losses whatsoever (including but without limitation any lost future revenues, lost future profits, expenditure incurred or otherwise) suffered or incurred by the Reseller solely or substantially because this Agreement has been breached by the Supplier or terminated by either party.
- 10.2 All liability of the Supplier that is not expressly assumed in this Agreement is hereby excluded to the fullest extent permitted by law. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other cause of action relied on by the Reseller. For the purposes of this clause 'the Supplier' includes its employees, sub-contractors and suppliers. The Reseller acknowledges that the Supplier's employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.
- 10.3 Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of this Agreement to each party and the commercial standing of each party.

11. **Price**

- 11.1 Prior to making any Service available to a Reseller Client, the Reseller shall purchase from the Supplier the Service corresponding to each Service to be provided to each Reseller Client by the Reseller, by paying to the Supplier the price set out in the Price List (plus VAT, where applicable)("the Price").

- 11.2 The Reseller may at its sole discretion determine the price to be paid by the Reseller Clients for the Services and for the First Level Support it supplies to the Reseller Clients.
- 11.3 The Price List is subject to change by the Supplier on 30 days' prior written notice to the Reseller except where:
 - 11.3.1 the Supplier has agreed to maintain such price for the validity period of the Reseller's quote to the Reseller's Client, provided that such validity period is no longer than 30 days;
- 11.4 The Reseller shall be liable for any other agreed fees, any national, European Union, value added, sales, excise, state, local or other taxes or customs duties which are applicable.
- 11.5 All Prices shall be payable by direct debit from the Reseller's nominated bank account. Pursuant to clause 4.4 of this Agreement, above, no binding agreement for the provision by the Supplier of the Services in question shall arise until such payment is taken and received in cleared funds.

12. **Duration and Termination**

- 12.1 This Agreement shall become effective on the Commencement Date and is terminated when:
 - a) the last day of the month of the last Order cancelled;
 - b) when the Reseller wishes to end the Agreement;
 - c) in the event of Customer Abandonment

13. **Termination Consequences**

On the termination of this Agreement pursuant to clause 12 or by operation of law:

- 13.1 the Reseller can make arrangements to move any already contracted Reseller Clients to a new service provider in lieu of the Supplier;
- 13.2 the Reseller can 'sell' their Reseller Clients to the Supplier at which point the Reseller waives all rights pursuant to any contract they have with that Reseller Client and the Reseller shall have no claim against the Supplier for compensation for loss of reseller rights, loss of goodwill, lost future revenues, lost future profits, expenditure incurred, in accordance with the sale agreement between the Supplier and the Reseller;
- 13.3 the Reseller shall cease to promote, market, advertise the Services to Reseller Clients or potential clients or solicit Reseller Clients for the Services;
- 13.4 clauses that are necessary for the enforcement or interpretation of this Agreement shall survive, which shall include clauses relating to confidentiality and protection of Intellectual Property Rights (if any); and
- 13.5 subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

14. **Customer Abandonment**

- 14.1 In the event of Customer Abandonment the Supplier has the right to provide the Services directly to the relevant Reseller Client and the Reseller waives all rights to provide the Services to that Reseller Client and the Reseller shall

have no claim against the Supplier for compensation for loss of reseller rights, loss of goodwill, lost future revenues, lost future profits, expenditure incurred, or otherwise.

15. Data Protection

The parties undertake to comply with the provisions of the General Data Protection Regulation (GDPR) EU 2016/679 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

The Supplier has set out its obligations with the GDPR in the document named EU GDPR Compliance Document. The most recent version of this document is found at: <https://www.97team.co.uk/terms-of-service>

16. Interpretation

16.1 In this Agreement unless the context otherwise requires:

16.1.1 words importing any gender include every gender;

16.1.2 words importing the singular number include the plural number and vice versa;

16.1.3 words importing persons include firms, companies and corporations and vice versa;

16.1.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;

16.1.5 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;

16.1.6 the headings to the clauses, schedules and paragraphs of this Agreement will not affect their interpretation;

16.1.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

16.1.8 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

16.1.9 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

16.2 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any Schedule, the provision in the body of this Agreement shall take precedence.

17. (No) Agency, Partnership

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

18. Execution

This Agreement will only be binding once the first Order has been accepted.

19. **Amendments**

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

20. **Announcements and confidentiality**

No party shall issue or make any public announcement or disclose any information (other than to their professional advisers and then only if such advisers agree or are bound by law to keep the terms of this Agreement confidential) regarding this Agreement unless prior written consent has been obtained from the other party.

21. **Entire Agreement**

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

22. **Force Majeure**

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party.

23. **Notices**

23.1 All notices under this Agreement shall be given in writing.

23.2 Notices shall be deemed to have been duly given:

23.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

23.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

23.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

23.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid,

and in each case only if fully addressed to the postal address, e-mail address, or facsimile number that has most recently, at the time the said notice is sent, notified in writing to the other party.

24. **Schedules**

The provisions of all Schedules shall form part of this Agreement as if set out here.

25. **Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

26. **Subcontracting**

the Reseller may perform any or all of its obligations under this Agreement through agents or sub-contractors, provided that the Reseller shall remain liable for such performance and shall indemnify the Supplier against any loss or damage suffered by the Supplier arising from any act or omission of such agents or sub-contractors.

27. **Costs and Expenses**

Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

28. **Proper Law and Jurisdiction**

28.1 This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law.

28.2 The parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement. For the avoidance of doubt, the place of performance of this Agreement is agreed by the parties to be England.

SCHEDULE 1

Price List (excluding VAT)

Payment Details

All payments shall be made in UK Pounds Sterling by a direct debit setup between the Supplier and the Reseller.

1. Website Hosting Account

A hosting account that allows the Reseller to build and host a single website.

Hosting Package:

1Gb Disk Space

100Gb Bandwidth Per Month

Fully Integrated WordPress

Daily Backups

Hosting And Support – Price as shown on 97host.co.uk at the point of order.

The hosting will be pro-rated on the day of the order to the end of the month. The account is then added to your 1st of the month invoice.

2. SSL Certificate

A certificate to provide a secure connection between the end user and the server.

Price as shown on 97host.co.uk at point of order.

Fees

All monthly services are paid for in advance and can be cancelled by the Reseller. Once a cancellation has been made the monthly service will be ran to the end of that month, no refunds will be made for a partly used monthly service.