

# Hosting Agreement<sup>1</sup>

**DATE:** [date]<sup>2</sup>

**PARTIES:**<sup>3</sup>

- (1) [**COMPANY NAME**], a company incorporated in [jurisdiction] (registration number [number]) having its registered office at [address] (the "**Company**"); and
- (2) [**COMPANY NAME**], a company incorporated in [jurisdiction] (registration number [number]) having its registered office at [address] (the "**Customer**").

## BACKGROUND:

- (A) *[Insert explanation of the background to this Agreement.]*
- (B) *[For example, "The Company has expertise in the provision of website hosting services, and the Customer has appointed the Company to provide website hosting services on the terms of this Agreement".]*

## AGREEMENT:

### 1. Definitions and interpretation

#### 1.1 In this Agreement:

"**Affiliate**" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

"**Agreement**" means this agreement (including the Schedule) and any amendments to it from time to time;

"**Business Day**" means any week day, other than a bank or public holiday in [jurisdiction];

"**Business Hours**" means between [09:00] and [17:30] on a Business Day;

"**Charges**" means the amounts payable by the Customer to the Company under or in relation to this Agreement (as set out in the Schedule);

"**Confidential Information**" means:

- (a) any information disclosed (whether disclosed in writing, orally or

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<sup>1</sup>This template is suitable for use in relation to relatively straightforward B2B web hosting services (e.g. hosting small business-type websites and providing related email and back-up services).

<sup>2</sup>The date should be the date of signature; if the parties sign on different dates, it should be the date of the last signature.

<sup>3</sup>Where a party to the contract is a sole trader or partnership rather than a company, the following party definitions may be used:

sole trader: "[[**INDIVIDUAL NAME**] trading as [business name], which has its principal place of business at [address] (the "[**Company/Customer**]").]"

partnership: "[[**PARTNERSHIP NAME**], a partnership established under [applicable] law having its principal place of business at [address] (the "[**Company/Customer**]").]"

otherwise) by one party to the other party that is marked as "confidential", described as "confidential" or should have been understood at the time of disclosure to be confidential; and

(b) *[specify other confidential information here]*<sup>4</sup>;

**"Control"** means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** will be construed accordingly);

**"Effective Date"** means [the date of execution of this Agreement];

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Implementation Date"** means the date specified as such in the Schedule;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Minimum Term"** means the period [of 1 Year starting on the Effective Date];<sup>5</sup>

**"Personal Data"** means data relating to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller;

**"Prohibited Content"** means:

(a) material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or other third party rights, or may give rise to any form of legal action against the Company or the Customer or any third party;

[(b) pornographic or lewd material;] [and]

[(c) messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail;]

**"Resources"** means the resources specified in the Schedule;

**"Schedule"** means the schedule attached to this Agreement;

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<sup>4</sup>It can be useful to specify information which is to be treated as Confidential Information, so that there is no room for argument. E.g. "The information provided in the documents listed in the Schedule".

<sup>5</sup>Include this definition if there is a minimum term for the hosting services. See Clause 13.1 for related amendments.

**"Services"** means the services detailed in Clause [4];

**"Term"** means the term of this Agreement;

**"Website"** means the website specified in the Schedule; and

**"Year"** means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on [the Effective Date] or on any anniversary of [the Effective Date].

1.2 In this Agreement, a reference to a [statute or statutory provision or regulation] includes a reference to that [statute or statutory provision or regulation] as modified, consolidated and/or re-enacted from time to time.

1.3 The Clause<sup>6</sup> headings do not affect the interpretation of this Agreement.

## **2. Term**

This Agreement will come into force on the [Effective Date] and will continue in force [indefinitely, unless and until terminated in accordance with Clause [13]] [until [date] [event], upon which it will terminate automatically, unless terminated earlier in accordance with Clause [13]].

## **3. Transition and implementation**

3.1 At the request of the Customer, the Company will transfer the Website from its development servers or use reasonable endeavours to assist with the transition of the Website from any third party host.<sup>7</sup>

3.2 The Company will implement the hosting of the Website on or before the Implementation Date or, where the Company does not hold a copy of the Website at least [5] Business Days before the Implementation Date, within [5] Business Days after the date of receipt of a copy of the Website.

3.3 Within [5] Business Days following the Implementation Date (or, if later, the actual date of implementation of the hosting of the Website), the Customer will comprehensively test the hosting of the Website and will inform the Company of the results of those tests.

## **4. Services**

4.1 From the date of actual implementation, the Company will host the Website in the manner specified in the Schedule, and will make available the Resources for this purpose.

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This is a sample document, showing the first few sections of a premium precedent available from:

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<sup>6</sup>In different jurisdictions there are different ways of referring to discrete contractual provisions. Alternatives to "Clause" include "Section" and "Article".

<sup>7</sup>This provision will be relevant where the hosting company takes over a website previously hosted by, or created by, a different company.

<http://www.contractology.com>