

Master Services Agreement

V011110



www.just-computing.co.uk is a site operated by Just Computing Ltd, trading as Just Simply Hosted (we). We are registered in England and Wales under company number 03384522 and with our registered office at 27 Marlpit Road, Sharpthorne, East Grinstead, West Sussex, RH19 4PD.

You will be asked to sign a Hosted Service Order Form ("HSOF") that lists the services you have chosen and the related fees. The HSOF will incorporate this Master Services Agreement ("MSA"), our Privacy Policy (<http://www.justsimplyhosted.com/JSHPriacyStatement.pdf>), and an Acceptable Use Policy ("AUP") (<http://www.justsimplyhosted.com/JSHAceptableUsePolicy.pdf>). It may also incorporate an addendum to this MSA if you are purchasing specific optional services. When we use the term "Agreement" in any of these documents, we are referring collectively to all of them. By signing the HSOF you warrant that:

- You are legally capable of entering into a binding contract; and
- You are at least 18 years old.

The Agreement is effective as of the time that the HSOF is signed, and will continue until terminated in accordance with clause 9.

Definitions

The definitions in this MSA apply to expressions used in the HSOF and any addendum as agreed between us.

Some other words and expressions used have the following particular meanings:

"Confidential Information" means:

1. information about a party's customers, data, employees, contractors, suppliers, policies, salaries, employment conditions and arrangements, whether these are actual or potential;
2. information in relation to either party's databases which is not publicly available;
3. information about and concerning the services provided by the Company and those which are in the development stage;
4. information regarding prices, discounts, business and financial marketing development, manpower plans, financial position or future plans; and/or
5. all other information, whether technical, non technical, scientific or non scientific which either party considers might cause considerable harm were it to be available and/or used by any unauthorised person or party.

"End User(s)" means anyone to whom you provide access to the Services;

"Fee(s)" means the monthly recurring fee(s) set out in the HSOF;

"Force Majeure" means any event beyond the reasonable control of the affected party;

"Initial Term" means the minimum term for which we will provide the Services as set out in the HSOF;

"Set Up Fee" means our initial installation charge as set out on the HSOF or as otherwise agreed in writing between us;

"Services" means the services to be provided by us as set out in the HSOF and includes (i) management of the Services by a service delivery team that includes support specialists with training and experience in hosting systems, (ii) availability of support; and (iii) use of the Just Simply Hosting customer portal. For the avoidance of doubt, the services provided do not include any customer hardware or internet connections.

"Service Levels" means our service level commitments set out in clause 5 below;

"Supplemental Fee(s)" means all fee(s) payable by you in respect of any additional services we provide to you including without limitation fees for migrating servers, reconnection and reinstatement of service fees, and any emergency service fees all of which shall be agreed between us if not agreed in writing in advance with you in the HSOF.

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1. What we will do for you

1.1 We will perform the Services for the duration of this Agreement in accordance with the Service Levels and with reasonable care and skill. In return you agree to pay the Set Up Fee, Fees and any Supplemental Fees on time and agree to use the Services in accordance with the terms of this Agreement.

1.2 After you sign this Agreement, you will have the opportunity to test the Services to ensure they are suitable, and we will agree a date from which we commence billing (Live Date), usually 7-10 days from signing. If you are not happy with the Services before the Live Date, you may cancel the Agreement immediately but must still pay the Set Up Fee.

1.3 We will use reasonable efforts to ensure that the Services remain virus free for the duration of this Agreement and we will provide virus checking as set out in the HSOF.

1.4 Subject to clause 2.3, we will action your request to increase or decrease the amount of End Users as soon as practicable after we receive your request.

1.5 We are constantly upgrading our datacentre facilities and in order for you to benefit from this, you agree that we may relocate your servers within our datacentres, make changes to the provision of the Services, URLs and your IP addresses and may establish new procedures for the use of the Services. In each case we will give you reasonable advance notice and use all reasonable endeavours to minimise the effect that such change will have on your use of the Services.

1.6 After the Live Date, we will send you a personalised appendix, which will list all components of the Services we are providing to you.

2. Payment

2.1 You must pay for the Services using a credit or debit card, or with a standing order. All payments must be made monthly and in advance, and when you sign up for the Services, you must give us accurate card or standing order details.

2.2 You agree that we will deduct the Fees automatically, commencing with the Live Date, and then on each monthly anniversary of the Live Date. We will send electronic invoices for your records.

2.3 Where you increase the amount of End Users, we may deduct the Fees deemed applicable by us immediately at our discretion. Where you decrease the amount of End Users, the adjusted Fees may become applicable at the next anniversary date at our discretion.

2.4 We will charge the fees as quoted on the HSOF. We may increase our fees from time to time, and will give you at least 1 month's written notice. If you do not wish to continue using our Services as a result of a price increase, you may cancel this Agreement in accordance with clause 9.

2.5 You agree to pay all Supplemental Fees where we incurred costs at your request or at your default.

2.6 All payments must be made in Pounds Sterling.

2.7 We reserve the right to suspend and/or terminate any or all of the Services if the Fees and any other sums due to us have not been paid in full and on time. Time shall be of the essence in relation to your payments.

2.8 In the event that you terminate this Agreement for no cause and wish to migrate your data you agree to pay a Supplemental Fee as reasonably determined by us.

2.9 All Fees and Supplemental Fees are exclusive of the then applicable rate of Value Added Tax or other relevant taxes.

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3. Your obligations, acknowledgements and warranties

3.1 You need to provide and maintain your own equipment, software and communications lines, including any public lines required by you to properly access your hosted solution, content or data. You acknowledge that any software you use to access our Services must be subject to and suitable for Microsoft support.

3.2 While we provide security for the Services as set out in the HSOF, you acknowledge that any internet use may be insecure and liable to breach. You undertake to put in place reasonable security measures in relation to your business when using our Services. It is your responsibility to ensure that all End Users change their passwords regularly and keep their passwords secure.

3.3 Subject to clauses 3.4 and 4, you warrant and represent that you and the End Users' use of the Services will not be in breach of the AUP nor any other applicable laws, codes or regulations including data protection laws.

3.4 You agree that we may suspend Services without telling you and without liability (but where practicable, we will give you reasonable prior notice) if:

3.4.1 the Services are being used in violation of the AUP;

3.4.2 you do not cooperate with our investigation of any suspected violation of the AUP;

3.4.3 there is an attack on your servers or other event for which we reasonably believe that the suspension of Services is necessary to protect you, our network or our other customers; or

3.4.4 if required by law or regulation or as compelled by a law enforcement or government agency.

3.5 You acknowledge that our Services are provided on an 'as is' basis, and you acknowledge that when you sign this Agreement the Services are fit for purpose.

4. Indemnification

You agree to indemnify us, and keep us indemnified against all damages losses and costs (including legal costs) and expenses of any nature incurred by us as a result of your breach, or any breach by an End User, of any provision of this Agreement.

5. Service Levels

5.1 We use reasonable and commercially prudent endeavours to ensure that when the Services are not undergoing scheduled or unscheduled maintenance, the Services will be available 99.7% of the time in each month.

5.2 We will not carry out scheduled maintenance services during normal business days, UK time. We will use reasonable endeavours to give you notice of any unscheduled maintenance, but we are not able to guarantee this.

5.3 In the event the Service availability falls below 99.7% in any given month due to our fault and not inclusive of any maintenance activities, we will issue you with a pro-rated refund of the monthly recurring charges (up to a maximum of 100% of the monthly recurring charge).

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6. Ownership Rights and Confidentiality

6.1 Each of us agrees that this Agreement does not transfer any rights of ownership in the other's technology nor intellectual property. Each of us agrees not to try to access each other's and each other's third party supplier's source code or other trade secrets.

6.2 Each of us agrees that (i) it will use the other party's Confidential Information solely for the purpose of the Agreement, and (ii) it will not disclose the other party's Confidential Information to any third party except as required under the terms of this Agreement.

7. Warranty and Liability

7.1 We warrant that we will use all reasonable skill and care in performing this Agreement and will comply with all relevant laws, statutes and regulations (including the Data Protection Act 1998).

7.2 The remedies given in the Service Levels are your **only** remedy for our failure to meet our warranted performances.

7.3 Nothing in this Agreement excludes or limits our liability for fraudulent misrepresentation or for death or personal injury caused by our negligence.

7.4 Subject to clause 7.3:

7.4.1 we will not be liable in any way for any:

- a) increased costs nor expenses;
- b) loss of profit;
- c) loss of business contracts;
- d) loss of revenues nor expected savings;
- e) loss of goodwill;
- f) loss of data or information; nor
- g) special, indirect or consequential damage whatsoever arising out of this Agreement; and

7.4.2 our total aggregate liability for any loss or damage arising out of or in connection with the Services or this Agreement will not exceed the actual Fees received by us during the previous 6 months of this Agreement.

7.5 Except for the warranties given in this Agreement, all implied or other warranties are excluded to the extent we are legally able to do so.

7.6 We will not be deemed to break this Agreement nor be liable for any delay, failure of performance nor interruption of the Services to you nor loss caused by any Force Majeure event. If a Force Majeure event adversely affects your use of the Services and continues for more than 4 weeks, you may terminate this Agreement by written notice to us.

8. Third party products

8.1 At your request and subject to you entering into their standard contracts, we may provide third party software and/or services and may also provide product support for them.

8.2 If this Agreement indicates that we will use Microsoft Software to provide the Services, you agree to the Customer Licence Terms as defined in the Microsoft Software policy and agree that if you make the Services available to any End User, you will require each End User to also agree to those terms.

8.3 You agree that the use of third party products is in accordance with their standard contracts is at your sole risk and we are not responsible in any way for their performance, features nor failures.

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9. Termination

9.1 Either of us may end this Agreement

9.1.1 on 30 days written notice to the other after expiry of the Initial Term; or

9.1.2 immediately if the other breaches this Agreement and if the breach is capable of being remedied, has not remedied it within 7 days of receipt of the written notice requiring it to be remedied; or

9.1.3 immediately if the other is unable to pay its debts or enters into compulsory or voluntary liquidation or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts, or declares personal bankruptcy.

9.2 On termination by either of us the following will apply:

9.2.1 any rights or obligations which have accrued prior to termination will not be affected;

9.2.2 any refunds due to you under clause 5, will be paid by us within 30 days, if it is more than the Fees due to us;

9.2.3 all Confidential Information belonging to the other will be returned or destroyed within 14 days;

9.2.4 you will give up any internet protocol numbers addresses or address blocks allocated to you and if you do not we can change or remove them. You hereby appoint us to be your attorney to execute and do any such instrument or thing, and generally to use your name, for the purpose of giving us the benefit of this clause.

9.3 If this Agreement is terminated during the Initial Term for your breach then you will still be liable to pay all Fees for the remaining days of the Initial Term.

10. Entire Agreement

This Agreement and any documents referred to in it constitute the whole Agreement between us, and you acknowledge that you do not rely on any statement or representation, whether oral or otherwise, from any person, in relation to this Agreement.

11. Law and disputes

11.1 This Agreement shall be governed by English law.

11.2 Each of us agrees to attempt in good faith to clear up any dispute first by discussing it. If that does not work then, except for debt recovery, we each agree to attempt in good faith to resolve the dispute through mediation services subject to each party's mutual and reasonable consent. If we cannot reach agreement within 2 weeks from the start of the dispute then each party agrees to the non exclusive jurisdiction of the Courts of England.

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12. General legal provisions

12.1 If any part of this Agreement is unenforceable the remainder will continue to apply.

12.2 We won't be considered to be partners nor shall we be responsible for any act or failure to act of the other or have the right or authority to bind the other in any way.

12.3 A third party won't have any rights under this Agreement.

12.4 You may not transfer or assign all or substantially all of its rights or duties under this Agreement without the prior written consent of the other except that each of us may transfer all or part of its rights or duties to any group company or affiliates who in the other's reasonable opinion have sufficient assets to meet the obligations of such assignment under this Agreement.

12.5 Any legal notice shall not be binding unless in writing and may be given by hand delivery or prepaid first class post only. Any other notice or other communication given or made under this Agreement shall be in writing and may be given by either hand delivery, prepaid first class post, facsimile transmission or electronic mail.

12.6 Any such notice which is given in accordance with Clause 12.5 above, shall be deemed to have been received with the other party in accordance with the contact details set out in the HSOF:

a) at the time of delivery if delivered by hand;
b) on the second working day following the day of sending the notice by prepaid first class post; or
c) on despatch in the case of a facsimile transmission or electronic mail, provided that the sender does not receive any indication that the electronic mail message or facsimile transmission has not been successfully transmitted to the intended recipient.

12.7 If one of us does not enforce a right available to it under this Agreement in any particular instance, then that will not prevent it from enforcing that right in future or in any other instance.

12.8 Each of us agrees that during this Agreement and for 1 year after that it will not directly or indirectly seek to hire any of the other's staff who provided or used the Services.

12.9 Each of us gives the other its consent to positively publicise that we have a business relationship, but not to disclose the terms of it.