

# NETIM - GENERAL TERMS AND CONDITIONS FOR SITE BUILDER

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NETIM, 165 avenue de bretagne 59000 LILLE, FRANCE,

Hereafter referred to as "NETIM"

Undertakes to fulfill a provision of service under the conditions stipulated below :

## DEFINITIONS :

- "Server": Hosting platforms, excluding Software, shared by several Clients and enabling NETIM to provide the Service.
- "Software": online application enabling the Customer, with complete autonomy, to create, edit, put online and modify one or more Websites which will be hosted on the NETIM's Servers.
- "System Resources": capacity of storage, RAM and processor of the Server, all Software associated to it, as well as the Shared Bandwidth capacity made available to Clients by NETIM in the framework of the Service.
- "Website": site created by the Client with the Software.

## CLAUSE 1 : PURPOSE

These terms are intended to define the technical and financial conditions relating to the Website creation Service made available by NETIM, hereinafter designed as "the Service".

These conditions are also intended to define the contractual provisions applicable to the subscription and use of the Service by the Client.

These conditions supplement the "CG-NETIM" and prevail over these conditions should any conflict arise between these two documents. They may also, where appropriate, be applicable in conjunction with the CG-ND which would then be traceable to each separate benefits involved.

## CLAUSE 2 : DESIGNATION OF SERVICE

The Service allows the Client to create a Website via an online creation tool. The Service is provided under license by Parallels Presence Builder to NETIM and offered to any user having a valid domain name.

The Service includes the Software and all associated manuals, user manuals, help files or embedded Software's instructions as well as System Ressources enabling to publish the Website.

The Service is available in various offers allowing different capacities and fonctionnalités.

## CLAUSE 3: USE OF SERVICE

The Client is granted a personal, revocable, nonexclusive, non-sublicensable, license which in only provided for use the Service.

During the term of the Agreement, the Client shall, to the extent that is reasonable, apply and maintain adequate security measures to safeguard the Service dans the Software from use by any unauthorized person.

The Client shall not use the Service in any that is not expressly permitted under this Agreement. This includes a prohibition on:

- removing or modifying any markings on the Service or any distinctive mark conferring intellectual property rights ;
- modifying, renting, leasing, transferring, assigning, disposing of, sub-licensing, transferring any of its rights to, creating derivative works based on the Service or any part of them ;
- causing or permitting any alteration, adaptation, translation, decompilation, disassembly, or reverse engineering of the Service (other than as permitted by applicable law).

## **CLAUSE 4 : DECLARATIONS & NETIM'S RESPONSIBILITIES**

### **4.1 NETIM's declarations**

NETIM undertakes to ensure :

- Website hosting ;
- management of Servers on which the Website is hosted ;
- data storage of the Website ;
- Software updates.

NETIM undertakes to exercise due care and diligence in providing quality service in accordance with industry practice. NETIM responds only to an obligation of means.

NETIM manages the Server's hardware and the Software maintenance. NETIM strives to maintain the Server, the System Resources and the physical connection to the telecommunications networks.

NETIM agrees, if necessary, to replace the defective elements in the shortest possible time without charging the Client for those Services, unless the malfunction of the Server and / or System Resources has been caused by the Client.

NETIM ensures the Server's installation and configuration, and, where applicable, maintenance or updates.

NETIM provides the Client with System Resources as determined in the selected Package, to ensure the proper functioning of the Website's Shared hosting and the Service.

### **4.2 NETIM's responsibilities**

NETIM reserves the right to discontinue the Service, particularly if the Service is a danger for NETIM's Server, whether due to hacking of the Service, or following a non-facility update application which results in the detection of a flaw in the system security.

NETIM cannot be held responsible for :

- the content, sound, text, images, form elements, data available on the Websites hosted on the Client's Service, transmitted or uploaded by the Client and in any capacity whatsoever ;
- non-compliance or partial of a bond and/or failure of the operators of transmission networks to the Internet world and in particular his or her access providers ;
- a failure due to misuse of the Service by the Client.

For the purpose of NETIM's infrastructure's security, the Client is advised that the functionalities of the Website are limited. NETIM reserves the right to take necessary actions to maintain the integrity of its infrastructure.

NETIM undertakes to prior notify the Client of any suspension of the Service but reserves the right to immediately suspend the Service when it might prejudice the site operation.

NETIM shall not be held liable for failure or any fault due to misuse of the Service by the Client or the Software provider.

## **CLAUSE 5 : DECLARATIONS & CLIENT'S RESPONSIBILITIES**

### **5.1 Towards legal provisions and third parties**

The Client represents and warrants that he will use the Service in good faith and that he has no knowledge or reason to believe that his domain or the content of his Website infringes upon or conflicts with the legal rights of any third party or any third party's trademark, trade name, copyright and/or any distinctive mark conferring intellectual property rights.

The Client shall be solely responsible for ensuring compliance with all local laws and regulations related to his domain, his Website, and the Website content. The Client is also solely responsible for observing all applicable export and import laws that govern use of the Service. In particular, he shall not export the Software, or any part thereof, directly, or indirectly, in violation of these laws, or use them for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation.

NETIM indicates the Client that the application enabling the development of the Website is a copyrighted Software and, as such, is protected by the applicable legislation on Intellectual Property, including the Copyright. Therefore, the Client is responsible for Intellectual Property rights on design elements (themes, pictures, etc.) provided by the Software and the Software itself.

## **5.2 Towards the Service**

The Client warrants that neither the Service nor his domain name and the Website associated will be used in connection with an illegal or morally reprehensible activity, or in connection with transmission of unsolicited commercial Emails ("SPAM").

The Client undertakes not to edit illegal Website content as well as Websites having hypertext links to these kind of Websites on the NETIM's Service.

The Client undertakes not to edit Websites with pornographic content, justifying crimes against humanity, war crimes or any messages of a violent or pornographic nature, or any messages that may bring harm to human dignity, when these messages can be seen or perceived by a minor.

As well, NETIM reminds the Client that the source code of the Software cannot be modified despite the possibility to customize his Website through the insertion of files, pictures for example.

## **ARTICLE 6 : SERVICE AVAILABILITY**

Due to the Shared nature of System Resources and of the Server assigned to the availability of the Service, NETIM is not in a position to guarantee constant availability of the Service for the Client. NETIM does its very best to provide the Service, subject to maintenance periods.

NETIM reserves the right to interrupt the Service for maintenance work and/or improvement of the Service and/or the Server. Whenever it is possible for NETIM to do so, it will notify the Client prior to any interruption of Service. In the event of an emergency, NETIM nevertheless reserves the right to suspend partially or totally, for a reasonable period of time, the Service in order to conduct required technical operations. Such interruptions of Service do not entitle the Client to compensation.

As part of maintenance and/or improvement of the Service and/or the Server that may impact the compatibility of the Client's Website. NETIM agrees to notify the Client 15 days in advance and state the details of evolution and new requirements (eg a new Software version or any Server's system elements). Then, the Client must ensure that his Website and other scripts will be compatible with the requirements before the due date. After this date, NETIM won't ensure the proper functioning of any Website which is not up-to-date or which is not compatible with the new specifications and/or requirements.

In the event of inaccessibility of Service due to technical dysfunctions falling under NETIM's responsibility, NETIM will do its utmost to resolve the dysfunction(s) within 48 working hours starting from the written notification by the Client to NETIM provided that :

- the Client describes the dysfunctions as precisely as possible;
- the Client fully collaborates with NETIM;
- said dysfunctions are not due to the misuse of the Service by the Client.

## **CLAUSE 7 : RENEWAL / EXPIRATION OF THE SERVICE**

When the Service's expiry date has passed, and failing prior renewal by the Client, the Service shall be frozen and suspended for a period of sixty (60) calendar days during which all NETIM's associated Services shall not be available.

Any expired Service can be renewed at the rate and conditions applicable at the time of its subscription . Once payment of the price in full has been received by NETIM, the Service and its associated Services shall be immediately re-activated for the new chosen duration starting from the previous expiry date.

When the suspension period of sixty (60) calendar days has passed, the Service will be removed by NETIM. Therefore, data from the Service can not be recovered including files, statistics of visits and more generally all the data associated with the Service.

The Client acknowledges that it is not possible to restore or recover data when the Service is removed from NETIM's Server.

For every subscription when the Domain Name was previously registered with another registrar, the Client must ensure at his own expense and under his own power, the renewal and payment of the Domain Name, irrespective of the renewal of the Service.