

Visicom Hosting
Service Contract
(VHSC v2.1)

SERVICE CONTRACT

1. INTRODUCTION

Visicom Hosting (Visicom) is a trading name of The Samuel Oscar Company Limited, Registered in England and Wales (Registration Number 05336709), and a part of its organisation. On behalf of The Samuel Oscar Company Limited, Visicom provides website hosting and email services (Services) to the Client in return for payment of a relevant fee. Visicom has agreed to provide Services to the Client on the terms below and as set out in an Acceptable Use Policy which is amended from time to time in accordance with changes in the Law and what Visicom regards as ethical Internet use. In this Contract and related documents, Visicom acts for and represents The Samuel Oscar Company Limited.

2. SERVICES

- 2.1 In consideration of the payment of the fees as they fall due, Visicom shall provide, for the Client, space on its servers and shall ensure that its servers are accessible from the Internet. Visicom shall provide user interfaces at its servers to enable the Client to comply with this Contract. Visicom shall have software available on its servers to run website applications that are generally and normally used on the Internet including email services. Visicom may choose, at its own discretion, to provide other services to the Client who is free to take up such services or to obtain them elsewhere. Visicom shall not be liable for any costs incurred by the Client in obtaining, from other providers, services that Visicom choose to offer.
- 2.2 The Client shall be responsible for all actions required to place their web content on the server and to ensure that it functions in accordance with their requirements. The Client shall be responsible for all actions required to access the server so as to send and retrieve email. Visicom shall provide the access codes to the Client that enable the Client to comply with this paragraph of the Contract. Any other action by Visicom taken to assist the Client in complying with this clause shall not become a contractual obligation.
- 2.3 Visicom may make changes to the operation of its servers provided that the changes do not have a material adverse affect on the Services. Visicom may update its equipment and thereby require the Client to accept the physical relocation of their Services. In this event, Visicom shall carry out the relocation process in a way that minimises the actions required of the Client and minimises any reduction in Service Availability.
- 2.4 Visicom shall not be responsible for the consequences of any unauthorised access to the Client's data. It is the Client's responsibility to maintain the security of access codes and to change them where and when appropriate. Visicom shall provide the means whereby the Client can comply with this clause.

3. SERVICE AVAILABILITY

- 3.1 "Service Interruption" shall mean an interruption in the provision of Services, other than that resulting from:
- 3.1.1 acts or omissions of the Client;
 - 3.1.2 the causes stated in clause 12 (Force Majeure);
 - 3.1.3 suspension of Services as described in clauses 3.5 and 5 below;
- 3.2 If a Client suffers Service Interruptions that exceed a total of 1 hour per month, averaged over the period covered by the fee, Visicom will give the Client free use of the Service equivalent to the duration of the Service Interruptions.
- 3.3 Visicom shall use all reasonable endeavours to rectify any Service Interruption as soon as practicable. Where a Service Interruption continues for more than 20 continuous days, the Client may terminate this Contract by notice to Visicom and fees charged for the Contract shall be calculated pro rata on a time spent basis.
- 3.4 This clause sets out Visicom's entire liability to the Client for any and all Service Interruptions.
- 3.5 Visicom may interrupt the Service to carry out adjustments, repairs, testing, maintenance or improvements that cannot be carried out without a planned interruption. Visicom shall give the Client notice of any such planned interruption and minimise the period of interruption. Visicom shall arrange for such interruptions to take place at a time that minimises the effect on the Client's use of the Services.

4. FEES

- 4.1 The annual fee, for the term of this Contract, is set out in Addendum A to this Contract. Upon renewal of the Contract, the fee may be changed in accordance with clause 4.5.
- 4.2 The Client shall pay an annual fee for Services, in advance, upon demand. On receipt of payment, the Client shall be issued with a receipted invoice for the relevant amount upon request. Save as set out in clause 3.2, the Client shall have no entitlement to Services for any period for which fees have not been paid.
- 4.3 Visicom may charge interest on any overdue amount at the rate of 8 per cent per annum above the BBA compiled London InterBank Offered Rate in force from time to time from the date the payment became overdue (10 working days after the issue of the invoice for the fee), as well after as before judgement, and until the overdue amount has been paid in full together with any interest thereon. Interest shall be calculated on a daily basis and compounded monthly and shall be payable on demand.
- 4.4 Visicom may increase the fee no more than once each year on not less than 30 day's notice to the Client. Where such increase exceeds 10% of the then current fee, the Client may terminate this Contract within 14 days of notice of such increase. Otherwise the Client shall be deemed to have accepted such increase and the fee shall be varied accordingly.

4.5 All amounts are stated exclusive of:

4.5.1 all taxes (other than those on Visicom's profits) duties, levies or imposts;

4.5.2 and bank charges, relating to the remittance of the fee to Visicom's bank, all of which shall be paid by the Client at the same time as the fee.

5. SUSPENSION OF SERVICE

5.1 Access to or use of the Service may be suspended in whole or in part if:

5.1.1 Visicom does not receive payment of the fee within 10 working days of the issue of the invoice for the fee;

5.1.2 the Client is in breach of any of the terms of this Contract;

5.1.3 required to do so by any competent authority; or

5.1.4 Visicom has reasonable grounds for suspecting that 5.1.1 or 5.1.2 is likely to occur or has occurred.

5.2 Visicom shall take reasonable steps to notify the Client of any suspension pursuant to clause 5.1. Visicom shall not be obliged to restore the Service to a Client until it is satisfied that the breach has been remedied or is unlikely to occur or re-occur or that the competent authority has approved the restoration. The right to suspend shall not prejudice any other right that Visicom may have in respect of the incident giving rise to suspension. Client shall not be entitled to any refund of fee for any period of suspension pursuant to this Contract.

5.3 Visicom reserves the right to make an additional charge for restoring Services for any suspension, pursuant to clause 5.1, before restoring Services.

6. MONITORING AND CONTENT

6.1 Visicom do not monitor the content of the data traffic using the Services unless requested to do so by a competent authority. The Client hereby consents to such monitoring.

6.2 The Client shall indemnify Visicom and keep Visicom indemnified and hold Visicom harmless against all damages, losses, costs and expenses (including but not limited to legal costs and expenses) suffered by Visicom and arising out of or in connection with any actions claims or proceedings against Visicom by any third party as a result of any breach by the Client of any term of this Contract.

7. CONFIDENTIALITY

- 7.1 Confidential information shall mean in the Client's case, any content of the data traffic and in Visicom's case the pricing of its Services.
- 7.2 A party ("receiving party") shall not disclose, to a third party, the other party's ("disclosing party") confidential information except with the prior consent in writing of the disclosing party, as required by law, or to the extent to which that information is publicly available or already known to the receiving party at the date of receipt from the disclosing party.

8. LIMITATION OF LIABILITY

- 8.1 UNDER NO CIRCUMSTANCES SHALL VISICOM BE LIABLE FOR:

8.1.1 LOSS OF REVENUE, PROFITS, GOODWILL OR CONTRACT, DAMAGE TO REPUTATION OR LOSS OF OR CORRUPTION OF DATA; OR

8.1.2 FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, COSTS, EXPENSES OR OTHER CLAIMS FOR CONSEQUENTIAL COMPENSATION WHATSOEVER OR HOWSOEVER CAUSED WHICH ARISE OUT OF OR IN CONNECTION WITH THIS CONTRACT.

- 8.2 SUBJECT TO CLAUSE 8.1, VISICOM'S AGGREGATE LIABILITY TO THE CLIENT IN RESPECT OF ANY AND ALL CLAIMS UNDER OR IN CONNECTION WITH THIS CONTRACT WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, MISREPRESENTATION OR BREACH OF STATUTORY DUTY SHALL NOT EXCEED THE PREPAID FEES FOR THE UNEXPIRED PERIOD AT THE TIME OF THE EVENT GIVING RISE TO THE CLAIM.

- 8.3 REFERENCE IN THIS CLAUSE TO "EVENT" SHALL ALSO MEAN A SERIES OF EVENTS CONNECTED BY THE SAME CAUSE WHICH SHALL BE CONSIDERED A SINGLE EVENT.

- 8.4 IN NO EVENT SHALL THE CLIENT RAISE ANY CLAIM UNDER THIS CONTRACT MORE THAN SIX MONTHS AFTER THE DISCOVERY OF CIRCUMSTANCES GIVING RISE TO SUCH CLAIM.

- 8.5 **THE LIMITS ON LIABILITY IN THIS CLAUSE ARE SET ON THE BASIS OF THE FEES CHARGED AND THE NATURE OF THE SERVICE BEING SUPPLIED. VISICOM WILL, IF REQUESTED, CONSIDER HIGHER LEVELS OR A WIDER SCOPE OF LIABILITY BUT THESE WILL BE SUBJECT TO AN ADDITIONAL CHARGE.**

9. TERM AND TERMINATION

- 9.1 The term of the Contract shall be one year. The Contract shall be renewed automatically for a subsequent term of one year unless either party shall advise to the contrary by giving at least 21 days notice prior to the end of that contractual year. Unless or until terminated earlier pursuant to the terms of this Contract, this Contract may be terminated by one party giving to the other not less than 21 days notice.
- 9.2 Visicom may terminate this Contract at any time by notice to the Client if Visicom is prohibited by any relevant law from providing Services to the Client.
- 9.3 Either party shall be entitled to terminate this Contract by notice to the other at any time if the other commits a breach of any of the terms and conditions of this Contract.

10. EFFECTS OF TERMINATION

- 10.1 Any termination of this Contract shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination including, without limitation, Clauses 4.2, 6.2, 7, 8, 9, 10, 13, and 14.
- 10.2 Following termination of this Contract, Visicom shall discontinue the Services with immediate effect. The Client shall be responsible for maintaining the integrity of their data and Visicom shall not be held responsible for any loss of data as a result of the discontinuation of Services. The Client shall be entitled to a pro rata refund of fees unless the Client is in breach of this Contract.

11. NOTICES

Any notice to be given under this Contract shall be in writing and delivered by hand, sent by recorded delivery letter, fax or e-mail to the address, fax number or e-mail address of the relevant party specified in this Contract or to such other address or fax number or e-mail address as may be notified by that party in accordance with this clause.

12. FORCE MAJEURE

Visicom shall not have any liability for any loss or damage if its performance of the Contract, in whole or in part, is delayed, hindered or prevented by any cause beyond its reasonable control, including without limitation, fire, storm, flood, earthquake, accident, adverse weather conditions, solar, meteorological or astrological disturbances, explosions, Acts of God, war, governmental controls, restrictions or prohibitions, strikes, lock-outs, industrial action, employment disputes, protests, vandalism, interruptions in communications or power supply. In the event of such delay, hindrance or prevention Visicom shall be entitled to postpone performance by the duration of interference plus a reasonable start-up time.

13. GENERAL

- 13.1 The Client acknowledges that it has not relied and does not rely upon any representation or statement by Visicom unless expressly set out in this Contract or subsequently agreed to in writing by Visicom.
- 13.2 These terms are the entire Contract between the parties with regard to their subject matter and no other terms, conditions, warranties or statements will apply. Any variation to this Contract must be in writing and signed on behalf of both parties. If a court decides that any part of this Contract cannot be enforced, that particular part of the Contract will not apply, but the rest of the Contract will. A waiver by a party of a breach of any provision shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provisions. Failure or delay in exercising any right under this Contract shall not prevent the exercise of that or any other right. The Client may not assign or transfer any benefit, interest or obligation under this Contract. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.
- 13.3 In this Contract: references to clauses and sub-clauses are to the clauses or sub-clauses of this Contract; headings are for convenience only and do not affect interpretation of this Contract; the singular includes the plural and vice versa.

14. LAW AND JURISDICTION

The laws of England and Wales shall govern this Contract and the parties submit to the exclusive jurisdiction of the Courts of England and Wales. Judgment may be enforced in any court of competent jurisdiction and each party waives any right that it may have to object to the exclusive jurisdiction of the Courts of England and Wales.

ADDENDUM

The Addendum is subject to review at each renewal of a Contract and is attached to each Contract at the time of agreement with the Client. Current prices may be seen on the Visicom website.