

# NETIM – GENERAL TERMS AND CONDITIONS OF USE FOR THE RESELLER SERVICE

CG-RES version 1.3, 1<sup>st</sup> june 2018

This contract is between

- NETIM, limited liability company under french law, with head office located 165 avenue de bretagne 59000 LILLE FRANCE, registered under number 451394720 RCS LILLE, VAT number FR5545139472, website <http://www.netim.com>, hereafter referred to as "NETIM"
- any private or public corporation wishing to resell one or more of the services provided by the company NETIM, hereafter the "Reseller"

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 NETIM's other services Terms and Conditions which would then be traceable to each separate benefits involved.

## CLAUSE 1: DEFINITIONS

The terms used in these « CG-RES », beginning with a capital letter are to be interpreted in compliance with the definition applied to them in the general terms and conditions CG-ND.

The following terms, whether used in singular or plural in these « CG-RES », will have the following definitions:

-« Service »: NETIM's service supplied as part of the reseller service.

-« Interface »: Technical elements which the Reseller uses for requesting operations. This Interface is made up principally of a control panel dedicated to the Reseller Service and an API.

« Operations»: All Domain Name operations for example a registration, transfer, renewal or restoration, etc., requested via the Interface.

## CLAUSE 2: PREAMBLE

The applicable regulations for registering and managing Domain Names are defined by the Trustee Authorities and the Registries in charge of managing each Extension on a global or national scale.

These entities grant accreditation to Registrars authorised to register and manage Domain Names with different Extensions. NETIM, as an accredited Registrar, is contractually linked to these Trustee Authorities or Registries. NETIM's services must therefore comply with technical, legal, Trustee and contractual constraints.

Therefore, by delegating its tools to the Reseller, subject to compliance with these General Terms and Conditions, NETIM also delegates the responsibility of respecting and getting its clients to respect the laws and regulations in force to the Reseller.

## CLAUSE 3: SERVICE DESCRIPTION

NETIM allows the Reseller in a non-exclusive, revocable and non-transferable way, to use for their own means or for offer to their Clients, NETIM's Domain Names Management Service for all or some of the Extensions for which NETIM is accredited, using an Interface provided by NETIM.

In any event, NETIM's Service is an intermediary technical Service between the Reseller, their prospective Clients and the Registries.

## CLAUSE 3: NETIM's AGREEMENTS

3.1 NETIM provides priority assistance to the Reseller ahead of regular NETIM Clients.

3.2 NETIM ensures the Reseller has the greatest independence for organising their business, to develop working methods allowing the Reseller to provide their clients with the best quality of service possible, subject to compliance with standards imposed by Trustee Authorities and Registries.

3.3 NETIM agrees not to directly contact the Reseller's clients except in the following situations:

- i) To meet a legal, Trustee or contractual requirement imposed by the Trustee Authorities or Registries (for example as part of authorisations required for transferring a domain between Registrars or as part of a data check linked to a Domain Name)
- ii) To respond to a question which a Reseller's Client has posed of their own accord to NETIM.
- iii) If the Reseller can no longer be contacted, has ceased trading, and/or if the account has been suspended or terminated. This does not exonerate the Reseller from their responsibilities to NETIM or to their Clients and their obligation to guarantee and pay for damages.
- iv) In case of serious breach of this contract.

In theory, NETIM will not get involved with the Reseller's Clients, except in cases of serious disagreement where they are going against the Domain Name owner, and the owner should have referred the matter to NETIM, and which would result in the violation of NETIM's General Terms and Conditions including breaking the law relating to the quality of a Domain Name owner.

3.4 NETIM provides an Interface so that the Reseller can manage his account and request Operations. This Interface is made up of a control panel available at this address <https://netim.com/direct/> and an API for automating Operations requests.

3.5 NETIM agrees to pass on registry price increases and decreases for different Operations as quickly as possible in compliance with clause 5.3

3.6 NETIM agrees to refund all Operations which have been paid for but which have not been successfully carried out, provided that these Operations can still be cancelled and refunded by the Registry.

## **CLAUSE 4: THE RESELLER'S AGREEMENTS**

4.1 The Reseller agrees to have a prepaid account with sufficient credit so that they can place orders for new Operations that require paying for. If this is not the case, NETIM will not be able to accept these requests.

4.2 The Reseller recognises that, to apply regulations imposed on NETIM by the Trustee Authorities and the Registries, NETIM, the Trustee Authorities and/or the Registries could need to directly contact the Reseller's clients and/or get involved with the Reseller's Domain Names. The Reseller agrees not to obstruct these actions which the Reseller expressly consents.

4.3 In any event, for all Domain Names registered or transferred through NETIM, the Reseller agrees to:

- i) Prepay for requested Operations, according to the special terms and rates that the Reseller benefits from, when placing requests via the Interface.
- ii) Provide complete, exact and reliable information and to update it regularly for themselves, their Clients and their Contacts in order to maintain a public, reliable, complete and up to date [Whois](#) database conforming to regulations imposed by Trustee Authorities and the Registries.
- iii) Comply and monitor their Clients compliance with third party rights (Trademark rights, intellectual property rights, personality rights etc.) and laws and regulations in force in connection with the use of NETIM's Services and especially the applicable laws and regulations in France.
- iv) Not to use or allow NETIM's Services to be used for engaging in or participating in any way whatsoever in illegal, fraudulent or harmful activities of any kind or any activities which contravene the regulations issued by the Trustee Authorities and Registries.

4.4 The reseller recognises that NETIM could request that the Reseller intervenes or directly gets involved with a Domain Name carrying out activities which could be harmful to the Internet community such as but not limited to the following activities: sending spam (large dispatch and/or repeated dispatch of non solicited emails to people whom the sender has never had contact with and where the address was collected in an irregular way), phishing activities, or other activities involving the theft of personal information, virus spreading, Trojan horses or other harmful computer viruses, use of a third party computer for illicit or illegal activities (computer embezzlement, hacking, botnet etc.)

4.5 The Reseller recognises that in case of a dispute related to an alteration made or requested for a Domain Name linked to the Reseller's account, the Reseller alone will be responsible and must guarantee NETIM against any damaging circumstances which could ensue so that NETIM does not have to worry about the situation.

4.6 As imposed by our Registrar Agreement with ICANN, if the Reseller intends to register any domain names governed by ICANN, the Reseller abides to the following provisions:

- i) Reseller is prohibited from displaying the ICANN or ICANN-Accredited Registrar logo, or from otherwise representing itself as accredited by ICANN unless it has written permission from ICANN to do so.
- ii) Any registration agreement used by Reseller shall include all registration agreement provisions and notices required by the ICANN Registrar Accreditation Agreement and any ICANN Consensus Policies, and shall identify NETIM as sponsoring registrar or provide a means for identifying NETIM as sponsoring registrar, such as a link to the InterNIC Whois lookup service.
- iii) Reseller shall identify NETIM as sponsoring registrar upon inquiry from the customer.
- iv) Reseller shall ensure that the identity and contact information provided by the customer of any privacy or proxy registration service offered or made available by Reseller in connection with each registration will be deposited with Registrar or held in escrow or, alternatively, display a conspicuous notice to such customers at the time an election is made to utilize such privacy or proxy service that their data is not being escrowed. Where escrow is used, the escrow agreement will provide, at a minimum, that data will be released to Registrar in the event Reseller breaches the current agreement, and such breach is harmful to consumers or the public interest. In the event that ICANN makes available a program granting recognition to Resellers that escrow privacy or proxy registration data as detailed above, and Reseller meets any other criteria established by ICANN in accordance with its Bylaws, Reseller shall be permitted to apply to ICANN for such recognition.
- v) To the extent that NETIM is obligated to provide a link to an ICANN webpage, Reseller also shall be under an obligation to provide such linkage.

4.7 The Reseller acknowledges compliance with personal data protection laws that are part of the French law (applicable to NETIM), as part of the laws of its own jurisdiction (applicable to the Reseller), including international treaties and EU GDPR legislation (applicable to customers).

## CLAUSE 5: RATES – TERMS OF PAYMENT

5.1 It is free to be a part of the Reseller program. However, the prepaid account must be credited so that required Operations can be prepaid for via the Interface.

5.2 NETIM may authorize a line of credit to the Reseller allowing it to work in post payment. This mode of operation has been specified by NETIM in the document "Credit Policy" available on the website at <https://www.netim.com/general-terms.html>

5.3 The Reseller benefits from a special pricing displayed on our website as well as in section « domain > prices» in the Reseller's control panel. The pricing for each operation is based on the NETIM's operating costs at registries + a fixed management fees acquired by NETIM. Operating costs are calculated in Euros and exchange rates applied are those in force at the central European bank when the calculation is made. As the pricing is calculated everyday, **it can vary day to day according to exchange rates or change in cost pricing at the registries.**

5.4 An Operation will be charged for when it is carried out and confirmed by the Registry. The corresponding amount will be debited from the Reseller's prepaid account.

5.5 Unless otherwise authorised by the customer service team, NETIM cannot provide refunds for Operations which have already been supplied and which have already been prepaid. It is therefore the Reseller's responsibility to ensure their Client's pay before the Reseller requests an Operation through the Interface. NETIM however agrees to refund all operations which have not been successfully carried out provided that these Operations can still be cancelled and refunded by the Registry.

## CLAUSE 6: DURATION - SUSPENSION

6.1 These « CG-RES » come into effect on the date that the Reseller account is activated by NETIM for an indefinite period of time. NETIM stores in its database the date and version of these « CG-RES » which have been accepted by the Reseller during the application phase.

6.2 Either of the parties can end the contract at any time by sending a recorded letter subject to its compliance with the required notice period of one (1) month, and that it is properly addressed to the contact associated with the Reseller's account or NETIM's headquarters.

6.3 The closure of the Reseller's account will only be effective and carried out if the Reseller is no longer linked with any active Domain Names. It is therefore the Reseller's responsibility to obtain the agreement of their Clients so that they can transfer management of Domain Names in case of the closure or suspension of a Reseller account for any reason whatsoever.

6.4 In the case of a serious breach of obligations by the Reseller, NETIM could suspend, without prior notice, the account and terminate this contract, provided that it is considered a serious breach of contract, especially:

- i. If the Reseller knowingly provides false, incomplete, imprecise or out of date contact details for its own account or allows its clients to violate our general terms and conditions, regulations imposed by Registries and Trustee Authorities, and laws and regulations in force.
- ii. If the Reseller generates either through negligence or interference, numerous complaints from their clients.
- iii. If the Reseller directly or indirectly damages NETIM's IT system, especially if the use of our services disrupts smooth overall operations.
- iv. By using NETIM's services to engage in or participate in any way whatsoever in illegal, fraudulent or harmful activities of any kind, or in any activities which contravene regulations set out by the Trustee Authorities and Registries.

6.5 If the Reseller's account is inactive for a prolonged period of time, and if the account is no longer connected to any Domain Names, NETIM could ask the Reseller what their intentions are regarding the continuation of the contract. If the Reseller fails to respond to this request, NETIM reserves the right to close the account with one (1) month notice.

6.6 If the Reseller ceases trading, the Reseller agrees to find someone to take over the Domain Names linked to their account and to inform their clients. The Reseller could potentially choose NETIM to take over their Clients

## **CLAUSE 7: RESPONSIBILITY AND CLIENT GUARANTEE**

7.1 The Reseller is entirely responsible for the use of NETIM's Service by their Clients. NETIM, the Trustee Authorities and the Registries are not in any way liable for this.

7.2 In any event, the Reseller agrees to pay compensation, defend, guarantee and clear NETIM of all liability for appeals, claims, requests and third party actions in relation to registrations or the use of Domain names that the Reseller manages.

7.3 The obligations set forth in this clause continue after the contract has ended whatever the reason, expressly resulting from contracts linking NETIM to the Trustee Authorities and Registries.

## **CLAUSE 8: INTELLECTUAL PROPERTY RIGHTS**

8.1 As part of this contract, NETIM authorises the Reseller to use NETIM's brands and logos as part of the Service use. This authorisation can be revoked at any time at NETIM's discretion and should not be construed in any way as a termination of contract.

8.2 At no time can the Reseller claim to be an accredited Registrar nor claim to have privileged rights, approval or a certification or seal of approval of any kind, nor can the Reseller use the brands and logos of the Trustee Authorities and the Registries unless written consent has been received from the aforementioned bodies.

8.3 The availability of special or necessary tools for the Reseller for using NETIM's Service does not imply the transfer of ownership rights or the concession of NETIM's licence or its partners to the advantage of the Reseller from these tools. The Reseller has the right to use these special tools as part of their use of NETIM's Service during the entire term of this contract.

## **ARTICLE 9 : PRIVACY AND DATA PROCESSING**

9.1. Processing of personal data has been specified by NETIM in the document « Personal Data Processing Policy » which is available on the website at the following address <https://www.netim.com/general-terms.html> and is deemed to be part of these terms and conditions.

9.2 Personal data of registered domain name holders and contacts is processed by NETIM on behalf of Reseller, where NETIM operates as a data processor as that term is defined in applicable European data protection legislation. Similarly, both the Reseller and NETIM act as data processor s on behalf of Registries that act as the data controllers.

9.3 Since NETIM is responsible for its Resellers in front of the Registries, the Reseller acknowledges to be subject to the same requirements than NETIM in the processing of the personal data and undertakes to respect the laws in force as stipulated in clause 4.7

9.3. Reseller is responsible for obtaining appropriate consent or other proper legal basis for the data processing, and must be able to supply proof of same to NETIM. Reseller shall indemnify and hold harmless NETIM from all claims from data subjects relating to missing consent or insufficient legal basis.

9.4. Reseller is responsible for any requests for disclosure, correction or erasure regarding personal data made by natural persons. In case NETIM receives such a request, it shall be forwarded to Reseller for further handling. Nevertheless, for lack of processing of the Reseller within a reasonable time, NETIM will have the obligation under the applicable law and its contractual commitments with the Trustee Authorities and Registries, to treat the request in its own information system and with concerned Registries.

## **CLAUSE 10: CONTRACTUAL CHANGES**

10.1 If one or more clauses in this Contract are found to be invalid or declared to be invalid in accordance with any law, regulation or following a definitive decision by a competent court, other clauses will still retain their force and bearing.

10.2 The fact that one of the parties has not temporarily or definitively requested the application of a clause in this Contract cannot be considered a waiver of rights by this party. Any type of correspondence such as written, electronic etc. does not call into question the terms of this contract unless an amendment has been duly signed by representatives from both parties.

10.3 In the event that the law is changed and where new obligations will be imposed by this law, the new obligations will be directly incorporated into this contract without it being necessary to pre-warn either party, each party being accountable for their actions before the law. As such, the liability of either party cannot be questioned.

## **CLAUSE 11: APPLICABLE LAW - JURISDICTION**

11.1 This contract is subject to **French law**.

11.2 In the event of problems applying this contract, the parties agree to first submit to a mutual agreement procedure before undertaking legal action.

11.3 IN THE EVENT OF A DISPUTE IN RELATION TO THIS CONTRACT TO ITS INTERPRETATION AND EXECUTION, EXPLICIT AND EXCLUSIVE JURISDICTION IS ASSIGNED TO THE COURTS OF LILLE, IN FRANCE NOTWITHSTANDING MULTIPLE DEFENDANTS, GUARANTEE CLAIMS, SUMMARY PROCEEDINGS AND EXPERTISE.

---

## **CLAUSE 12: WARRANTY AND DISCLAIMER**

12.1 Each party represents and warrants that (i) it has the power and authority to enter into and perform its obligations under this Agreement and (ii) to the best of each party's knowledge, it currently has no restrictions that would impair its ability to perform its obligations under this Agreement.

12.2 NETIM represents and warrants to Reseller that: (i) the Service will be accurate and will be continuously and accurately updated under the terms and conditions of this Agreement; (ii) it has all necessary rights to grant the rights and licenses granted hereunder; (iii) the Service does not and will not infringe upon third party intellectual property rights, (iv) the Service does not and shall not contain any virus, worm, Trojan horse or other disabling device, (v) all the Services provided hereunder shall be performed in a professional and workmanlike manner, and in accordance with best industry practices and (vi) the Services will not defame or otherwise injure any third party.

12.3 EXCEPT FOR THE FOREGOING, NETIM AND RESELLER MAKE NO WARRANTY OF ANY KIND AND EACH HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY COURSE OF DEALING OR PERFORMANCE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

## **CLAUSE 13: CONFIDENTIALITY**

Each party agrees that all business, technical and financial information it obtains from the other party that is marked "Confidential" or "Proprietary," (or, if verbally disclosed, is promptly followed by a written summary of the information requesting confidential treatment for such information) are the confidential property of the disclosing party ("Proprietary Information"). Except as expressly allowed herein, the receiving party will hold in confidence and not use (except in connection with the performance of such party's obligations under this Agreement) or disclose any Proprietary Information of the disclosing party. The receiving party shall not be obligated under this Clause 12 with respect to information the receiving party can document: (a) is or has become readily publicly available without restriction through no fault of the receiving party or its employees or

agents; (b) is received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; (c) was rightfully in the possession of the receiving party without restriction prior to its disclosure by the other party; or (d) was independently developed by employees or consultants of the receiving party without reliance on such Proprietary Information. The receiving party may make disclosures required by law or court order provided the receiving party uses diligent reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the disclosing

---