

Sinclair Design provides Site System under the SaaS (Software as a Service) licensing and delivery model i.e. the system is centrally hosted and licensed on a subscription basis. Its use is subject to the terms and conditions laid out below and on the attached pages. If you agree to these terms, please sign accordingly and return this document to Sinclair Design. If you do not agree, you may not access the system – please contact Sinclair Design on 01490 450369 to discuss your concerns.

As Site System can be extended with an ecommerce module, and as such systems normally collect personal data, the terms below necessarily include many GDPR-specific clauses that are legally required to be included in service contracts of this nature.

1. Definitions

'The System' means the individual pages of source code that, together with all associated database schema, server directories, media, printed material and online and electronic documentation, collectively constitute the web application called Site System™, developed by Sinclair Design around the concrete5 open source codebase and its various extensions and add-ons.

'Customer' means you (either as an individual, a single entity, or the authoritative representative of a company or organisation), who has accepted these terms and conditions and/or made a payment to Sinclair Design for use of the System, and your authorised representatives.

'Deployment' means the unique instance of the System assigned to the Customer, which consists of a distinct database and unique filesystem directories in which the Customer's data is stored.

'User' means any person who accesses the Customer's Deployment via the system's administration interface.

'Data' means any text, numbers, digital graphics, database content or other digital information stored or capable of being stored within the Deployment.

'Data Subject' means a person or single entity whose details are recorded in a Customer's Deployment e.g. an online customer of the Customer.

'Deployment Personal Data' means Personal Data uploaded to, stored, displayed or backed up through the Customer's Deployment, as further described under Section 6 herein.

'GDPR' means the General Data Protection Regulation (EU) 2016/679, together with any national implementing laws in any Member State of the European Union, as amended, repealed, consolidated or replaced from time to time.

'Personal Data', 'Sensitive Personal Data', 'Personal Data Breach', 'Data Protection Impact Assessment', 'Data Protection Authorities', 'Processing', 'Processor', 'Subprocessor' and 'Controller' will each have the meaning given to them in Article 4 of the GDPR.

'Intellectual Property Rights' means copyright, patents, trademarks, design rights, database rights, trade secrets, know how, rights of confidence and all other similar rights anywhere in the world whether or not registered and including applications for registration anywhere in the world.

2. Scope

The terms and conditions herein govern the Customer's use of the System and related services provided by Sinclair Design. Upon acceptance, this document becomes a binding contract that will continue in effect until terminated in accordance with Sections 3 or 10 herein. The terms and conditions herein supersede any written or oral representations or agreements, except where specifically varied by written agreement by Sinclair Design. By using the System, the Customer agrees to be legally bound by the provisions herein.

3. Suitability for Purpose

No warranty is given by Sinclair Design that the System will meet the Customer's particular requirements, whether operationally, functionally, accurately or otherwise, or that the System will be suitable for the Customer's intended purpose. However, the Customer may terminate this agreement without penalty 30 days after first use if the System does not meet its particular requirements, subject to immediate payment of licence/hosting fees for 30 days use pro rata to the agreed annual or quarterly rate.

4. Proprietary Rights, Licence and Restrictions

4.1 Ownership

Sinclair Design owns all Intellectual Property Rights in the System apart from the concrete5 codebase which is used under an MIT License granted by

Concrete CMS Inc. The Customer acknowledges that the terms and conditions herein convey a limited right to access and use the System but do not convey title or ownership of the System in any way to the Customer. The System contains commercially confidential source code and will therefore only ever be hosted on dedicated servers directly controlled by Sinclair Design and its authorised Subprocessors.

4.2 Licence Grant

Provided the agreed fees for the Customer's use of the System are paid to Sinclair Design in accordance with Section 11 herein, Sinclair Design grants to the Customer a non-exclusive, non-transferable licence to use the System in accordance with the terms and conditions herein, solely for the Customer's use in relation to resources owned or managed by the Customer. The Customer may not resell or sub-license the System in any form, and may not effect entry to the system nor access any page or Data therein by any means other than as specifically provided by the System or Sinclair Design.

4.3 Customer Data

4.3.1 Sinclair Design does not claim ownership of Data submitted to the System by the Customer. However, for the period during which the Customer stores such Data, the Customer grants to Sinclair Design a revocable, worldwide, royalty free and non-exclusive licence to use, display, copy, modify and distribute such Data solely for the purpose of delivering the System to the Customer, and always in accordance with the requirements and limitations of the GDPR. Such licence will cease upon termination of this agreement.

4.3.2 The Customer warrants that they have all necessary permissions from the owners of any Intellectual Property Rights attributable to Data input by the Customer to use such Data under the terms and conditions herein. The Customer shall indemnify Sinclair Design and keep it indemnified in respect of all claims and expenses arising out of any libellous matter or any infringement of Intellectual Property Rights or of any other related liability to any third party arising out of or connected with the Customer's use of the System.

4.4 Restrictions

4.4.1 The Customer warrants that they will not submit nor display on the System, nor publish through its associated interfaces, any Data connected with any illegal, deceptive, misleading, unethical, salacious, violent, pornographic or otherwise inappropriate material, goods or services.

4.4.2 Sinclair Design reserves the right to immediately terminate this agreement without notice, prejudice or refund if, in the reasonable opinion of Sinclair Design, the condition set in Clause 4.4.1 above is negligently breached by the Customer or the Customer's use of the System.

5. Confidentiality, Privacy and Data Protection

5.1 Data Storage Restriction

5.1.1 To conform with the requirements of Article 25(1) of the GDPR, Sinclair Design must be able to properly assess risks when determining the level of security technology to apply to the Data processed within the System. The Customer therefore agrees to only store personal information about Data Subjects in Data fields that are specifically labelled for that purpose. Accordingly, the Customer will never, under any circumstances, even momentarily, store payment card, bank account, sensitive medical information or Sensitive Personal Data (e.g. race or ethnic origin, political or religious beliefs, sexual orientation, criminal offences/convictions) about a Data Subject anywhere in the System, which is, where applicable, designed in such a way that Data Subjects only ever submit payment card details direct to the servers of PCI compliant payment gateway provider. The Customer will ensure that all Users understand this strict condition of contract.

5.1.2 Sinclair Design reserves the right to immediately terminate this agreement without notice, prejudice or refund if, in the reasonable opinion of Sinclair Design, the condition set in Clause 5.1.1 above is negligently breached by the Customer or the Customer's use of the System.

5.2 Protection of Data Relating to the Customer

The Customer recognises that Sinclair Design and its authorised associates may have sight of the Customer's financial/operational Data during the course of providing, maintaining and updating the System. Sinclair Design and its authorised associates will always treat such Data as commercially confidential and will protect such Data in accordance with all applicable legislation.

5.3 Reverse Engineering of Trade Secrets

The System contains valuable and proprietary trade secrets of Sinclair Design which could be reverse-engineered by technically competent persons. Accordingly, the Customer warrants that it will expend every effort to ensure the System's confidentiality and will not knowingly allow third parties to access, study or copy the system or its associated interfaces or documentation without the express consent in writing of Sinclair Design.

5.4 Privacy and Data Protection - General

Notwithstanding any overriding GDPR personal data provisions herein, the Customer recognises that Sinclair Design has no day-to-day control or influence over the Data submitted by the Customer to the System, or the content of emails dispatched by the Customer using the System (where applicable). Therefore the Customer shall comply with all relevant data protection and privacy laws and regulations in respect of such Data and email content, and shall indemnify Sinclair Design and keep Sinclair Design indemnified in respect of all claims, costs and expenses arising out of any privacy or data protection issue arising out of or connected with the Customer's use of the System.

6. GDPR-specific Terms and Conditions

6.1 Categories of Data Subjects

Sinclair Design and its authorised Subprocessors Process Personal Data relating to the Customer's customers and System Users, the purpose, extent and duration of which is determined and controlled by the Customer in its sole discretion. The Customer will not store payment card, bank account, sensitive medical information or Sensitive Personal Data (e.g. race or ethnic origin, political or religious beliefs, sexual orientation, criminal offences/convictions) about a Data Subject anywhere in the System.

6.2 Types of Personal Data

6.2.1 Sinclair Design expects Deployment Personal Data to predominantly include contact details, sales information and preferences relating to the Customer's customers and Users. However, the specific extent of the type of Personal Data Processed is determined and controlled by the Customer in its sole discretion, as contained in any Data uploaded to, stored in, displayed or backed up through the Customer's Deployment.

6.2.2 In accordance with the GDPR's principles of 'privacy by design and by default', the Customer undertakes to proactively minimise the Personal Data collected in the Deployment to only that necessary to fulfil its services and obligations to its Data Subjects.

6.2.3 The Customer acknowledges that Personal Data must not be collected or stored in the Deployment without specific, unambiguous, informed, freely given and clearly distinguishable consent from the Data Subject to do so.

6.3 Processing of Deployment Personal Data

6.3.1 For purposes of this agreement, the Customer and Sinclair Design agree that the Customer is the Controller of Deployment Personal Data and Sinclair Design is the Processor of such data, except when the Customer acts as a Processor of Deployment Personal Data, in which case Sinclair Design is a Subprocessor. As Controller, the Customer accepts that it is solely responsible for determining the legal basis for the Processing of Deployment Personal Data. If the Customer is a Processor, the Customer warrants that the Customer's instructions to Sinclair Design with respect to that Deployment Personal Data, including the Customer's designation of Sinclair Design as a Subprocessor, have been authorised by the relevant Controller.

6.3.2 Sinclair Design will only Process Deployment Personal Data on behalf of and in accordance with the Customer's prior written instructions and for no other purpose. Sinclair Design is hereby instructed to Process Deployment Personal Data to the extent necessary to enable Sinclair Design to provide the System in accordance with this agreement.

6.3.3 The Customer and Sinclair Design will each comply with their respective obligations under the GDPR, to the extent applicable to the Processing of any Deployment Personal Data in the context of the provision of the System. The Customer will: (i) comply with all applicable privacy and data protection laws

with respect to the Customer's Controlling or Processing of Deployment Personal Data and any Processing instructions that the Customer issues to Sinclair Design; and (ii) ensure that the Customer has obtained (or will obtain) all consents and rights necessary for Sinclair Design to Process Deployment Personal Data in accordance with the terms and conditions herein.

6.3.4 The Customer acknowledges that Sinclair Design is reliant on the Customer for direction as to the extent to which Sinclair Design is entitled to use and Process Deployment Personal Data on behalf of the Customer in performance of providing the System. Consequently Sinclair Design will not be liable under the terms and conditions herein for any claim brought by a Data Subject arising from any action or omission by Sinclair Design, to the extent that such action or omission resulted directly from the Customer's instructions or from the Customer's failure to comply with its obligations under the applicable data protection law.

6.3.5 If for any reason (including a change in applicable law) Sinclair Design becomes unable to comply with any instructions of the Customer regarding the Processing of Deployment Personal Data, Sinclair Design will: (i) promptly notify the Customer of such inability, providing a reasonable level of detail as to the instructions with which it cannot comply and the reasons why it cannot comply, to the greatest extent permitted by applicable law; and (ii) cease all Processing of the affected Deployment Personal Data (other than merely storing and maintaining the security of the affected Deployment Personal Data) until such time as the Customer issues new instructions with which Sinclair Design is able to comply. If this provision applies, Sinclair Design will not be liable to the Customer under this agreement in respect of any failure to provide the System due to its inability to process Deployment Personal Data until such time as the Customer issues new instructions in regard to such Processing.

6.4 Confidentiality

Sinclair Design will take reasonable steps to ensure that any person authorised to Process Deployment Personal Data on its behalf in the context of Sinclair Design's provision of the System, is reliable, is only granted access to Data needed to fulfil their duties, and is subject to professional or statutory confidentiality obligations in respect of that Deployment Personal Data.

6.5 Security Measures

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Sinclair Design will implement appropriate technical and organisational measures to protect against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Deployment Personal Data.

6.6 Subprocessing

The Customer authorises Sinclair Design to engage Subprocessors to perform specific services on Sinclair Design's behalf which may require such Subprocessors to Process Deployment Personal Data. If Sinclair Design engages a Subprocessor accordingly, it will: (i) inform the Customer of any intended changes concerning the addition or replacement of such Subprocessors giving the Customer an opportunity to object to such changes on reasonable grounds; (ii) keep the Customer informed if there is any change to the role or status of the Subprocessor; and (iii) enter into a written agreement with the Subprocessor that imposes on the Subprocessor the same obligations that apply to Sinclair Design under this agreement and Article 28(3) of the GDPR.

6.7 Data Subject Rights

At the Customer's request, and subject to suitable advance notice and payment of fees and expenses accordingly, Sinclair Design will provide the Customer with assistance necessary for the fulfilment of the Customer's obligation to respond to requests for the exercise of a Data Subjects' rights. The Customer shall be solely responsible for responding to such requests.

6.8 Personal Data Breach

6.8.1 Sinclair Design will notify the Customer as soon as practicable after it becomes aware of any Personal Data Breach, from whatever cause, affecting any Deployment Personal Data.

6.8.2 At the Customer's request, and subject to payment of fees and expenses accordingly, Sinclair Design will promptly provide the Customer with all reasonable assistance necessary to: (i) assist in the investigation, mitigation and remediation of a Personal Data Breach; and (ii) enable the Customer to meet their legal obligations under the relevant data protection laws with regards to reporting the Personal Data Breach and informing Data Subjects.

6.9 Data Protection Impact Assessment and Consultation

At the Customer's request, and subject to suitable advance notice and payment of fees and expenses accordingly, Sinclair Design will provide the Customer with reasonable assistance to facilitate: (i) the conduct of Data Protection Impact Assessments if the Customer is required to do so under the GDPR; and (ii) consultation with Data Protection Authorities, if the Customer is required to engage in such consultation under the GDPR, in each case solely to the extent that such assistance is necessary and relates to the Processing by Sinclair Design of Deployment Personal Data, taking into account the nature of the Processing and the information available to Sinclair Design.

6.10 Deletion of Deployment Personal Data

The provisions of Clause 10.1 herein notwithstanding (provision to the Customer of CSV copies of essential data), on expiration of this agreement, the Customer instructs Sinclair Design to permanently and securely delete all Deployment Personal Data in the possession or control of Sinclair Design or any of its Subprocessors, within a reasonable period of time (unless the applicable law of the EU or of an EU Member State requires otherwise).

6.11 Information and Audits

At the Customer's request, and subject to suitable advance notice and payment of fees and expenses accordingly, Sinclair Design will provide the Customer with all information necessary to enable the Customer to demonstrate compliance with its obligations under the GDPR, and allow for and contribute to audits, including inspections, conducted by the Customer or an auditor mandated by the Customer, to the extent that such information is within Sinclair Design's control and Sinclair Design is not precluded from disclosing it by any applicable law, the protection of trade secrets or intellectual property, a duty of confidentiality, or any other obligation owed to a third party.

6.12 Data Location and Transfers

Sinclair Design will only store and Process Deployment Personal Data within the European Economic Area. If the Customer transfers Deployment Personal Data in any form outside of the EU, the Customer undertakes that it will ensure that the transfer is in compliance with the conditions for transfer set out in Chapter 5 of the GDPR, and shall indemnify Sinclair Design in respect of all claims and expenses arising out of any related infringement of the GDPR.

6.13 Right to be Forgotten Caveats

6.13.1 If a Data Subject requests that their Personal Data is deleted, the Customer acknowledges that any User so authorised to action record deletions can delete the Data Subject's data record from the production version of their Deployment without the need for intervention by Sinclair Design.

6.13.2 The deletion of a Data Subject's personal data from backup archives of the Deployment is not technically possible as individual data records cannot be isolated from compressed backup archives, nor could they be deleted - if access was possible - without leaving orphaned data cross-references that would render the backup archive corrupt. The Customer therefore accepts that they will need to assure Data Subjects requesting data deletion that their personal data will not be restored from a backup archive to a production system except in rare instances such as the need to recover from a disaster or serious security breach. In such circumstances, the Customer accepts responsibility for maintaining a separate off-system record of data deletion requests, and then for taking the necessary steps to honour the original request by deleting the Data Subject's personal data from the restored backup.

6.13.3 In such rare circumstances as a backup restoration is required, Sinclair Design will inform the Customer of the timestamp of the backup archive being restored, and will do everything reasonably possible to mitigate disruption and loss of Data.

7. Errors and Interruption of Service

7.1 Technology in Context

The System uses complex, cutting-edge cloud technologies and methodologies and undergoes continual development in order to bring customers improved functionality and flexibility. Whilst such enhancements are always tested prior to roll-out, it is not commercially feasible to test every change or update relative to every possible system configuration. Therefore, the Customer warrants that it will be reasonably patient, understanding and helpful to Sinclair Design with diagnostic descriptions and assistance should bugs or errors be found following a system update. In return, Sinclair Design warrants that it will correct such bugs and errors as soon as is reasonably practicable.

7.2 Scope of Responsibility

7.2.1 Sinclair Design accepts no responsibility whatsoever for interruption of services caused by Acts of God, power failure or other circumstances beyond its control including: (i) total or partial failure of internet routers, switches or cables beyond the boundaries of the data-centres housing Sinclair Design's servers; (ii) total or partial failure of the Customer's ISP to supply a usable internet connection; (iii) total or partial failure of the Customer's telecoms points, LAN or routers; (iv) total or partial failure of the Customer's computers, devices or browsers; or (v) any other total or partial interruption of services caused by circumstances beyond the control of Sinclair Design.

7.2.2 Sinclair Design has used all reasonable endeavours to ensure that the System accurately calculates transactions, invoices and taxes without error, however the Customer acknowledges that Sinclair Design is not engaged in rendering legal or accounting services. If legal or accounting advice or other expert assistance is required, the services of a competent professional should be sought. Accordingly, Sinclair Design accepts no responsibility for accounting errors, and recommends that all computations performed by the System are double-checked by an appropriately skilled professional.

7.3 Browser Compatibility

The System has been created and tested for full functionality when accessed using the standards-compliant Chrome or Safari browsers (stable channel releases). Although Sinclair Design endeavours to ensure that the System functions correctly on all other current-release mainstream browsers, Sinclair Design does not warrant that it will do so. If the Customer wishes the System to be amended to cope with the quirks of any non-mainstream browser, Sinclair Design reserves the right to charge additional fees for doing so.

8. Security of User Accounts

8.1 The Customer acknowledges and agrees that it is solely responsible for: (i) maintaining the security and confidentiality of its Deployment User account usernames and passwords, and any other security or access information used by the Customer to access the System and its associated services; (ii) preventing unauthorised direct access to or use of the Customer's Data stored within the Deployment; and (iii) creating User accounts and assigning usernames and robust, secure passwords accordingly.

8.2 As all User passwords are stored in the Deployment as one-way hashes which are not in any way readable by Sinclair Design, the Customer will be solely liable for any actual or suspected disclosure of passwords, whether intentional or not, whereas Sinclair Design will be exempt of all liability.

8.3 It is the Customer's sole responsibility to ensure that any User granted access to the System by the Customer is reliable, that their access is strictly limited to what they need to know for the purposes of carrying out their duties in accordance with this agreement, that they are subject to confidentiality undertakings or statutory obligations of confidentiality, and that they have been adequately trained in all relevant issues and risks associated with data and system security and protection, and in how to recognise and guard against social engineering attacks such as 'pretexting' whereby a fictional situation is created for the purpose of obtaining sensitive information or system access from an unsuspecting individual.

9. Obligations, Disclaimer and Liability

9.1 Obligations

Sinclair Design will take all reasonable care and diligence to ensure that the System is error free and available for use 24 hours a day, every day of the year.

9.2 Disclaimer of Warranty

9.2.1 No warranty is given by Sinclair Design to the Customer that operation of the System shall be uninterrupted or error free, or that its operation by the Customer will satisfy any statutory or regulatory obligations, or that the System will assist with, guarantee or otherwise ensure compliance with any applicable laws or regulations, including but not limited to tax regulations.

9.2.2 Except as specifically set forth herein, no expressed or implied warranty of any kind is given by Sinclair Design, including warranties of fitness for a particular purpose, accuracy or non-infringement. If this exclusion is held unenforceable, then to the extent of such unenforceability, all express and implied warranties shall be limited in duration to a period of 30 days after this agreement is signed.

9.3 Limitation of Liability

9.3.1 The entire cumulative liability of Sinclair Design for all matters arising from or relating to this agreement that may lawfully be limited, whether arising from contract, tort (including negligence), product liability or otherwise, will not exceed the total System licence/hosting fees paid by the Customer in the 12 months preceding such liability arising.

9.3.2 No action related to the terms and conditions herein may be brought more than 12 months after the occurrence of the event giving rise to the cause of action.

9.4 Exclusion of Consequential Damages

The Customer uses the System at its own risk. Sinclair Design shall have no liability whatsoever for any indirect, special, incidental, exemplary, or consequential damages arising out of the Customer's use of or inability to use the System, including but not limited to damages for: theft, loss or corruption of Data howsoever caused; computational inaccuracies; loss of profits, business, revenue, goodwill, anticipated savings or the like; or for any other indirect or consequential loss, whether based in contract, tort (including negligence), product liability or otherwise, even if Sinclair Design has been advised of the possibility of such damages.

10. Termination and Breach

10.1 Termination

Notwithstanding Section 3 herein, either party may terminate this agreement by delivering a 90 day written termination notice to the other party. Upon such termination, Sinclair Design will delete all Deployment Data, personal or otherwise. Further, provided the Customer has settled all outstanding payments, Sinclair Design will, if requested and prior to deletion, supply the Customer with CSV files of essential customer and sales Data in the System's native schema. If the Customer requires such Data to be in a schema that is not native to the System, Sinclair Design reserves the right to charge reasonable additional fees for doing so.

10.2 Breach

10.2.1 Notwithstanding any GDPR clauses herein, or clauses 4.4.2 and 5.1.2 herein, without prejudice to any other rights to which it may be entitled, either party may terminate this agreement with immediate effect in the event that the other party is in default or breach of any material provision of this agreement, and such default or breach continues un-remedied after 30 days of the defaulting party being notified of the breach and of the other party's intention to terminate unless the breach is remedied. The Customer's rights under this agreement will cease upon termination and all invoices not paid by the Customer will become due and payable immediately.

10.2.2 The Customer shall indemnify Sinclair Design against any claims, losses, costs (including legal costs) and/or liability arising as a result of the Customer's breach of its obligations under the terms and conditions herein, or arising as a consequence of the services provided under this agreement.

11. Payment Terms

Payment for the use of the System will be invoiced quarterly in advance unless otherwise agreed in writing by Sinclair Design. Customers having a credit account will be allowed 30 days from the date of invoice to settle the account. Should the Customer's account become overdue in excess of 30 days, Sinclair Design reserves the right at its discretion to charge the Customer interest on all sums due from the Customer at a rate of 2.5% per month in respect of any month or part thereof in which such sums are outstanding beyond 30 days. Should the Customer's account become overdue in excess of 60 days, Sinclair Design reserves the right to suspend the Customer's use of the System without notice, prejudice or refund, until the overdue amount is paid.

12. Other Terms

12.1 Compliance with Laws

The Customer shall comply with all applicable local and foreign laws and regulations which may govern the use of the System, and will use the System only for lawful purposes in accordance with the terms and conditions herein.

12.2 Ambiguity

If the meaning of any clause or section of the terms and conditions herein is found to be ambiguous or unenforceable by a court of competent jurisdiction, the interpretation that is nearest to the most appropriate industry standard terms and conditions for commercial SaaS web applications similar in scope, delivery and cost to the System shall be adopted.

12.3 Enforcement

If any provision of this agreement is held to be unenforceable by a court of competent jurisdiction, such holding will not affect the validity of the other provisions herein. Failure or delay of either party to enforce any provision of these terms and conditions shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision or any other provisions herein.

12.4 Survival

Clauses 2, 4.1, 4.3.2, 5.3, 5.4, 9.2.2, 9.3.2 and 12 inclusive, together with all other provisions of this agreement which may reasonably be interpreted or construed as surviving the termination or expiration of this agreement, will survive.

12.5 Governing Law and Jurisdiction

These terms and conditions shall be governed by the laws of England and Wales and any matter or dispute arising in connection with them shall be subject to the exclusive jurisdiction of the courts of England and Wales.

Customer's Declaration

I acknowledge that I have read and understand this agreement and agree to be bound by the terms and conditions set forth herein.

Signed: Date:

Name:

Position:

Acting for: