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Master Services Agreement

This master services agreement is between **WEBHOSTING.NET INC.**, a Florida corporation ("*Webhosting.net*"), and the customer identified on the service order ("*Customer*").

Webhosting.net provides various computer infrastructure and related services to customers, including webhosting, application hosting, cloud products, domain and SSL certificates, and business continuity.

Customer wants to order one or more of these services from Webhosting.net.

Webhosting.net wants to provide the services requested to Customer subject to this agreement, which includes the (1) service order, (2) service level agreement ("*SLA*"), (3) privacy policy, (4) IP address policy, (5) acceptable use policy ("*AUP*"), and (6) any relevant appendices.

The parties thus agree as follows.

1. Webhosting.net's Obligations

1.1 *Provision of Services.* Webhosting.net will use commercially reasonable efforts to provide the requested services to Customer according to the specifications and timeframes listed in the service order and this agreement as long as Customer is not otherwise in breach of this agreement and has made all payments required under this agreement. Unless otherwise stated in this agreement or in the service order, Customer is responsible for all costs and expenses to provide all equipment, hardware, cabling, and software required to access or receive the services. Webhosting.net may change, discontinue, add, modify, re-price, or remove features or functionality from the services on notice to Customer as provided in this agreement. It is Customer's responsibility to check for notices on a frequent basis. If Customer continues to use the services following any change, Webhosting.net will consider this continued use as the Customer's acceptance of the change unless Customer provides timely written notice objecting to the changes as provided in this agreement. Webhosting.net may change or relocate its network and facilities used to provide the services to accommodate evolving technology, increased network demand, and provide enhanced services. These activities will not adversely affect the provision of services. Relevant third parties may provide third-party services and Webhosting.net is not responsible for the provision of third-party services.

1.2 *“Unlimited” Usage Policies and Definitions*

- 1.2(A) *Scope.* The “unlimited” usage policies and definitions apply only to shared and reseller hosting accounts.
- 1.2(B) *What “Unlimited” means.* Webhosting.net does not set an arbitrary limit or cap on the amount of resources the Customer can use. In good faith and subject to this agreement, Webhosting.net makes every commercially reasonable effort to provide its customers with all the storage and bandwidth resources needed to power their websites successfully, as long as the Customer’s use of the service complies with this agreement. By not setting limits on key resources, Webhosting.net is able to provide simple, consistent pricing to its customers as they grow their websites. Thus, a typical website may experience periods of great popularity and resulting increased storage without experiencing any associated increase in hosting charges.
- 1.2(C) *What “Unlimited” does not mean.* Webhosting.net employs complex mechanisms to protect its customers and systems from abuse. Webhosting.net’s offering of “unlimited” services is not intended to allow the actions of a single or few customers to unfairly or adversely impact the experience of other customers. Webhosting.net’s service is a shared hosting service, which means that multiple customer websites are hosted from the same server and share server resources. Webhosting.net’s service is designed to meet the typical needs of small business and home business website customers in the United States. It is not intended to support the sustained demand of large enterprises, internationally based businesses, or non-typical applications better suited to a dedicated server. Webhosting.net will make every commercially reasonable effort to provide additional resources to customers who are using their websites consistent with this agreement, including moving customers to new and bigger shared servers as necessary. However, to ensure a consistent and quality experience for all customers, Webhosting.net does place automated safeguards to protect against any one website growing too quickly and adversely impacting the system until Webhosting.net can evaluate those websites’ resource needs.
- 1.2(D) *Unlimited Hosting Space; Excessive MySQL Files.* Webhosting.net does not set arbitrary limits on the amount of disk space the Customer can use for the Customer’s website. Webhosting.net does not charge additional fees based on an increased amount of storage used if the Customer’s use of storage complies with this agreement. Please understand,

however, that Webhosting.net's service is designed to host websites. Webhosting.net does not provide unlimited space for online storage, backups, or archiving of electronic files, documents, log files, etc., and Webhosting.net will terminate the Customer's account if the Customer engages in this prohibited use. Accounts with a large number of files (inode count in excess of 200,000) can have an adverse effect on server performance. Similarly, accounts with an excessive number of MySQL/PostgreSQL tables (that is, in excess of 1000 database tables) or of database size (that is, in excess of 3GB total MySQL/PostgreSQL usage or 2GB MySQL/PostgreSQL usage in a single database) negatively affect the performance of the server. Webhosting.net may request that the Customer reduce the number of files/inodes, database tables, or total database usage to ensure proper performance or may terminate the Customer's account.

1.2(E) *Unlimited File Transfer.* Webhosting.net does not set arbitrary limits on the amount of visitor traffic a website can receive or on the amount of content the Customer can upload in a given month. Webhosting.net does not charge the Customer additional fees based on increased use of bandwidth, as long as the Customer's use of the services complies with this agreement. In most cases, the Customer's website will be able to support as much traffic as the Customer can legitimately acquire. However, Webhosting.net reserves the right to limit processor time, bandwidth, processes, or memory in cases where it is necessary to prevent negatively impacting other customers.

1.2(F) *Unlimited Domain Hosting.* Webhosting.net does not set arbitrary limits on the number of domain names the Customer can associate with the Customer's webhosting account.

2. Privacy

Collection of PII. The Webhosting.net privacy policy located at <http://webhosting.net/privacy.aspx> governs the collection and use of personally identifiable information ("PII").

3. Customer's Use of and Access to the Services

3.1 *Age and Capacity.* Customer must be at least 18 years old or otherwise have the legal capacity to order services. If Customer is ordering services on behalf of an employer, company, or other legal entity, Customer states that Customer has the legal right and authority to order the services and be bound to this agreement.

- 3.2 ***Rights to Use Services.*** Subject to the terms of this agreement, Webhosting.net grants Customer a nonexclusive, nontransferable, nonsublicenseable (except if required to exercise rights under section 3.2(B)), revocable right in the services solely to:
- 3.2(A) Use and access the services for internal purposes; and
 - 3.2(B) Use the services to create, offer, and provide the customer offerings.
- 3.3 ***Customer Obligations.*** Customer will do each of the following:
- 3.3(A) Deliver customer content using the supporting encoding format specified in the service order (if applicable);
 - 3.3(B) Comply with all applicable foreign and United States laws, including the Foreign Corrupt Practices Act (FCPA) and international anticorruption laws, and the Digital Millennium Copyright Act (DMCA) and intellectual property laws;
 - 3.3(C) Pay the fees for the services when due;
 - 3.3(D) Use reasonable security precautions for providing access to the services by its employees or other individuals to whom it provides access;
 - 3.3(E) Cooperate with Webhosting.net's or its affiliate's investigation of outages, security problems, and any suspected breach of this agreement;
 - 3.3(F) Comply with all license terms or terms of use for any software, content, service, or website (including customer content) that Customer uses or accesses when using the services;
 - 3.3(G) Give Webhosting.net true, accurate, current, and complete account information;
 - 3.3(H) Keep Customer's account information up to date;
 - 3.3(I) Be responsible for the use of the services by Customer and customer end users and any other person to whom Customer has given access to the services or customer offering;
 - 3.3(J) Comply with all third-party service ("*TPS*") agreements;
 - 3.3(K) Comply—and make sure its customer end users comply—with Webhosting.net's AUP and not otherwise use the services for the distribution of any material that Webhosting.net considers to be obscene, lewd, lascivious,

filthy, excessively violent, harassing, or otherwise objectionable;

- 3.3(L) Use commercially reasonable efforts to prevent unauthorized access to or use of the services and immediately notify Webhosting.net of any known or suspected unauthorized use of Customer's account, the services, or any other breach of security;
- 3.3(M) Where Customer provides customer offering as permitted under this agreement, enter into an agreement with customer end users that includes the relevant terms of this agreement and releases Webhosting.net and its affiliates from any liability for damages or losses customer end users may incur from using the customer offering; and
- 3.3(N) Reasonably comply with any request by Webhosting.net to cooperate with any third party audit, including software audits.

3.4 ***Customer Prohibitions.*** Customer will not do any of the following:

- 3.4(A) Use the services in any situation where failure or fault of the services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Customer may not use, or permit any other person to use, the services for aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug, and Cosmetic Act;
- 3.4(B) Copy, transfer, reverse engineer, disassemble, decompile, create derivative works of, or, except as part of an authorized customer offering, allow third party access to the services;
- 3.4(C) Remove any proprietary notices or labels contained in or placed by the services;
- 3.4(D) Use, post, transmit, or introduce any device, software, or routine that interferes or attempts to interfere with the operation of the services;
- 3.4(E) Take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the services' systems or networks, or any systems or networks connected to the services; or
- 3.4(F) Resell any of the services alone to any third party without first entering into a reseller agreement with Webhosting.net.

- 3.5 ***Special Terms for Third-Party Services.*** If Customer orders third party services under TPS agreements, Webhosting.net is not responsible for the third party services and the provider of the third party service is solely responsible for providing the third party services. However, the following sections of this agreement will apply to the third-party services: sections 10, 11, 12, 13, 16, and 17. In addition, if Webhosting.net provides or resells certain software and services to Customer, Customer may be bound by additional terms imposed by applicable third-party resellers or licensors, which are incorporated in this agreement by reference.

4. **Payment**

- 4.1 ***Fees.*** Customer will pay Webhosting.net in U.S. dollars the fees for the services listed on the service order. All fees for the provision of services (except as provided below for additional service fees and one-time fees) are due in advance of the first day of the relevant term. For example, the fees for services during the initial term will be due on the effective date or before the provision of services. The fees for the services for the renewal term would be due on or before the anniversary billing date for the renewal term. The amount due may be adjusted by addition of services, upgrade of services, discontinuance of services, or downgrade of services, and through the use of SLA credits. The customer understands that charges for bundled services will be “unbundled” if Customer cancels any part of the bundle of services. The fees for additional or upgraded services for which Webhosting.net accepts the order on the anniversary billing date will be due on the anniversary billing date. The fees for additional or upgraded services for which Webhosting.net accepts the order after the anniversary billing date will be pro-rated on a calendar day basis to the next anniversary billing date and billed as a one-time pro-rata charge on the next anniversary billing date. The fees will be due for the following renewal terms until cancelled by sending an email to support@webhosting.net with Customer’s domain name and reason for cancellation. Customer must submit requests for cancellation by email. Webhosting.net does not prorate any refunds.
- 4.2 ***Additional Service Fees; One-Time Fees.*** For fees for additional services such as Content Delivery Network (CDN) overages, bandwidth use overages, backup overages, and VMware use (including archive storage), payment will be due on the next anniversary billing date. One-time fees, such as setup fees, bandwidth, storage, administrative fees, and late fees are due when invoiced, or as otherwise agreed by Webhosting.net.
- 4.3 ***Changes to Fees.*** After the initial term of this agreement, Webhosting.net may change its fees on 60 days’ advance written notice.

4.4 **Payment Methods.** Customer will make payment through the credit card maintained on file with Webhosting.net, ACH electronic funds transfer, or any other method Webhosting.net approves. For payment methods such as credit card, the payment of fees will be automatic on the due date.

4.5 **Taxes**

4.5(A) All prices and fees specified in or referred to in this agreement are stated exclusive of any tax, including withholding tax, sales, use, value added, levies, import and custom duties, excise, or other similar or equivalent taxes imposed on the supply of services.

4.5(B) Customer will pay any sales, use, levies, excise, withholding taxes, or similar charges, direct or indirect, applicable or to become applicable, which are levied because of the supply of the services. Neither party will be liable for the other party's taxes based on income.

4.5(C) If withholding tax applies to any payments for services made under this agreement, Customer may deduct the withholding taxes and pay the withholding taxes to the appropriate tax authority. Customer will provide Webhosting.net an official receipt for any taxes withheld and must notify Webhosting.net before payment that Customer is required to pay the withholding tax. Customer will pay to Webhosting.net any additional amount to ensure that Webhosting.net receives the full amount of the invoice.

4.5(D) If Webhosting.net has the legal obligation to pay or collect taxes for which Customer is responsible under this section, Webhosting.net will charge the appropriate amount to Customer and Customer will pay this amount in addition to the amount of the invoice unless Customer provides Webhosting.net with a valid tax exemption certificate authorized by the appropriate taxing authority.

4.5(E) The parties will cooperate, where possible, to minimize the amount of withholding tax due by making advance clearance applications under the relevant double taxation treaties (where applicable) to the relevant tax authority to reduce the rate of withholding tax or exempt entirely this amount if applicable. Regardless, Customer will account for any tax withheld to the tax authorities on a timely basis.

4.6 **SLA Credits.** Customer will only use SLA credits, if issued to Customer's account, to offset future charges for services as provided in the SLA. Customer will not sell, convert to cash, or transfer SLA credits

to third parties or affiliates. SLA credits will expire on the termination of this agreement.

- 4.7 ***Late Fees; Reconnection Fees.*** Customer's failure to pay the fees on the due date will result in the assessment of a \$50 late fee for each month Customer is late. In addition, if any portion of the fees remains unpaid 30 days or more beyond the due date, Webhosting.net may also charge interest at the greater of 2% per month or the maximum permitted by law. If Webhosting.net has suspended Customer's access to the services over the public network as provided in section 15, Customer will incur a \$250 reconnection fee. These fees will be due on receipt, and Webhosting.net will not reconnect any services to Customer until full payment of these fees.
- 4.8 ***Credit Approval; Security Deposit; Possessory Lien.*** Customer will provide Webhosting.net with credit information as requested, and delivery of services is subject to credit approval by Webhosting.net. If Customer is required to pay Webhosting.net a security deposit, Webhosting.net may, without further notice to Customer and without prejudice to Webhosting.net's other remedies, apply part or all of the security deposit toward the cure of any default. If Webhosting.net does so, Customer will—within five business days after written demand—pay Webhosting.net an amount equal to the amount applied to restore the security deposit to its original amount. Webhosting.net may deposit the security deposit in an account with its own funds and Customer will not be entitled to receive interest on the security deposit. Webhosting.net will return any part of the security deposit not used within 30 days after the termination of this agreement, after Webhosting.net applies the security deposit to any outstanding amounts due to Webhosting.net. In addition, **Webhosting.net may retain—as collateral for unpaid fees and penalties—Customer's equipment, domains, customer-content, and other assets in Webhosting.net's possession.**
- 4.9 ***Refunds and Disputes.*** Except for the 30-day money-back guarantee for new hosting account registrations (which excludes domain registrations and SSL certificate purchases), all fees Customer pays for services to Webhosting.net are nonrefundable. If Customer believes that an invoice has errors or is incorrect, Customer's sole remedy is to seek SLA credits by notifying Webhosting.net within 30 days of receiving the disputed invoice with a full explanation of the basis of the disputed charges. Customer accepts as correct any invoice Customer does not dispute under this section within 30 days of receiving the invoice and will not dispute the invoice later. Customer may not chargeback credit-card payments to Webhosting.net. Any chargeback will result in an additional payment to Webhosting.net of up to \$500, which is a reasonable estimate of Webhosting.net's additional administrative costs. Returned checks, including electronic checks, will be subject to a returned check fee of \$25 or the highest amount allowed

by law, whichever is greater. **Customer is responsible for all fees and costs (including reasonable legal fees, court costs, and collection agency fees) incurred by Webhosting.net in collecting its fees.**

- 4.10 **No Setoff.** Customer may not withhold payment of any amounts due under this agreement or any service order or invoice because of any setoff of any claim or dispute with Webhosting.net, whether relating to Webhosting.net's breach, bankruptcy, or otherwise.
- 4.11 **Subpoena Fees.** If Webhosting.net receives a subpoena, court order, or other valid legal process or request, including a request from a governmental agency, seeking information concerning Customer or customer's end user, Customer will pay Webhosting.net's actual costs, expenses, and fees incurred in connection with providing a response, including reasonable legal costs, expenses, and fees incurred in connection with the request. Webhosting.net may either charge the payment method Customer has on file or send Customer an invoice. If by invoice, Customer must pay the invoice within 30 days from the date of receipt of the Webhosting.net invoice. Webhosting.net charges \$75 per hour for researching and compiling documents responsive to the subpoena.

5. **Accounts; Account Access; Communications; Transfer of Data Abroad**

- 5.1 **Accounts.** In order to use some of the services, Customer will have to create an account. Customer states that all information Customer submits when Customer creates Customer's account is accurate, current, and complete, and that Customer will keep Customer's account information accurate, current, and complete. If Webhosting.net has reason to believe that Customer's account information is untrue, inaccurate, out-of-date, or incomplete, Webhosting.net may suspend or terminate Customer's account. Customer is solely responsible for the activity that occurs on Customer's account—whether authorized by Customer or not—and Customer must keep Customer's account information secure, including any username, password, and customer number. Customer must notify Webhosting.net immediately of any breach of security or unauthorized use of Customer's account. Webhosting.net will not be liable for any loss Customer incurs because of any unauthorized use of Customer's account. Customer, however, may be liable for any loss Webhosting.net or others incur caused by Customer's account, whether caused by Customer, or by an authorized person, or by an unauthorized person.
- 5.2 **Account Access.** Webhosting.net assumes that all persons acting on behalf of Customer are authorized to act on behalf of Customer. Customer is responsible for controlling and monitoring persons who act or purport to act on Customer's behalf. Webhosting.net is not liable for any unauthorized access to Customer's account or the services. If Customer wants to limit the persons who may act on behalf of

Customer, then Customer must identify those persons in writing to Webhosting.net. If Webhosting.net becomes aware of an internal dispute about the services or access to the services, Webhosting.net will not take sides, but will require a court order or signed settlement agreement before providing assistance or otherwise providing access to the account or services.

- 5.3 *Communications with Webhosting.net.* Customer acknowledges that Webhosting.net may on one or more occasions call Customer about Customer's account, and that, for the purposes of all these calls, Customer does not have any reasonable expectation of privacy during those calls. Customer hereby consents to allow Webhosting.net, in its sole discretion, to record the entirety of those calls regardless of whether Webhosting.net asks Customer on any particular call for consent to record that call. Customer further acknowledges that, if permitted by applicable law, any recordings may be submitted as evidence in any legal proceeding in which Webhosting.net is a party.
- 5.4 *Transfer of Data Abroad.* If Customer is using the services from a country other than the country in which Webhosting.net's servers are located, Customer's communications with Webhosting.net or its servers may result in the transfer of information (including Customer's account information) across international boundaries. By using the services, communicating electronically with Webhosting.net and its servers, Customer consents to these transfers.

6. Ownership of Site

- 6.1 Customer acknowledges that Webhosting.net (or its licensors) owns all legal right, title, and interest in the site and the services provided by Webhosting.net, including all intellectual property or other proprietary rights that subsist in the site and services (whether those rights are registered or unregistered, and wherever in the world those rights may exist).
- 6.2 As between Customer and Webhosting.net, Webhosting.net or its licensors owns all materials on the site, including graphics, user and visual interfaces, images, software, applications, and text, as well as the design, structure, selection, coordination, expression, "look and feel," and arrangement of the site and its content (except for any customer content). In addition, Webhosting.net or its licensors owns the domain names, trademarks, service marks, proprietary logos, and other distinctive brand features found on the site.

7. Intellectual Property

- 7.1 Customer states that the customer content and Customer's use of the services will not infringe the intellectual-property rights of Webhosting.net or any other person.

- 7.2 Customer acknowledges that Webhosting.net or its licensors owns all right, title, and interest in any technology, including the software that is part of or provided with the services and any trademarks or service marks of Webhosting.net.
- 7.3 Unless otherwise specifically provided in this agreement, Customer will not distribute or authorize others to distribute Webhosting.net intellectual property in any manner without the advance written consent of Webhosting.net. Customer must comply with the DMCA in providing the customer offering. In addition, Customer will cooperate with Webhosting.net in responding to any DMCA notices received by Webhosting.net regarding any customer offering or customer content. Webhosting.net may disable or terminate Customer's account or the accounts of customer end users who may be repeat infringers. Webhosting.net will handle allegations of infringement according to its DMCA notice policy, which Webhosting.net may change on one or more occasions.

8. Trademarks

- 8.1 Customer hereby grants Webhosting.net a nonexclusive, worldwide, royalty-free, fully paid-up license—during the term of this agreement—to (1) use Customer's trademarks, service marks, logos, or trade name for Webhosting.net's provision of services (including support of services) to Customer; and (2) to list Customer as a customer of the services by Webhosting.net or its designees.
- 8.2 The license granted in this section includes the right to sublicense to affiliates and any third parties providing all or part of the services on behalf of Webhosting.net to achieve the license.

9. Backup and Security

- 9.1 Webhosting.net will maintain reasonable and appropriate measures related to physical security to protect customer content.
- 9.2 Except for responsibility for physical security, Customer will be solely responsible for data maintenance, integrity, retention, security, and backup of customer content. Customer will be solely responsible for undertaking measures to (1) prevent any loss or damage to customer content; (2) maintain independent archival and backup copies of customer content; and (3) ensure the security, confidentiality, and integrity of customer content. Webhosting.net will have no liability to Customer or any other person for loss, damage, integrity, usability, accessibility, or destruction of any customer content except in the case of Webhosting.net's gross negligence or willful and wanton misconduct.

- 9.3 Customer will use reasonable security precautions for providing access to the services by its employees or other individuals to whom it provides access, whether for Customer's internal business purposes or as a customer offering. Customer will be solely responsible for ensuring the confidentiality and security of all account usernames and passwords, and for all user conduct regarding the account credentials. Customer will implement internal protocols and procedures whereby terminated personnel will no longer be able to access any Customer username or password. All passwords Customer or its personnel use must be smart, secure combinations of characters and not be comprised solely of dictionary words.
- 9.4 If Customer transfers or is otherwise involved in the transfer of any customer content (whether for its business or otherwise) over the public network or private networks, then Customer is solely responsible for compliance with all applicable laws in all applicable regions or countries regarding the security, privacy, legality, or safe handling of the customer content.

10. Loss Payment (also known as Indemnification)

- 10.1 *In General.* Customer must pay Webhosting.net for any actual or alleged loss of Webhosting.net's that is caused by:
- 10.1(A) Customer's use of the services or third party services;
 - 10.1(B) Any breach or alleged breach by Customer of this agreement;
 - 10.1(C) Any breach or alleged breach by Customer including any person given access or customer end users of a third party's rights, including any actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, privacy, publication, or other proprietary right;
 - 10.1(D) Customer or customer end users' actual or alleged damage to the site or services; or
 - 10.1(E) Any actual or alleged violation or noncompliance by Customer or customer end users with any applicable law in any jurisdiction.

But Customer need not pay if the actual or alleged loss was caused by Webhosting.net's gross negligence or intentional misconduct.

10.2 *Definitions*

- 10.2(A) "*Loss*" means an amount that Webhosting.net is legally responsible for or pays in any form. Amounts include, for

example, a judgment, a settlement, a fine, damages, injunctive relief, staff compensation, a decrease in property value, and expenses for defending against a claim for a loss (including fees for legal counsel, expert witnesses, and other advisers). A loss can be tangible or intangible; can arise from bodily injury, property damage, or other causes; can be based on tort, breach of contract, or any other theory of recovery; and includes incidental, direct, and consequential damages.

10.2(B) A loss is “*caused by*” an event if the loss would not have occurred without the event, even if the event is not a proximate cause of the loss.

10.3 ***Webhosting.net’s Duty to Notify.*** Webhosting.net must notify Customer before the 30th business day after Webhosting.net knows or should reasonably have known of a claim for a loss that Customer might be obligated to pay. Webhosting.net’s failure to timely notify does not terminate Customer’s obligation, except if the failure prejudices Customer’s ability to defend the claim or mitigate losses.

10.4 ***Legal Defense of a Claim.*** Webhosting.net has control over defending a claim for a loss (including settling it), unless Webhosting.net directs Customer to control the defense. Webhosting.net and Customer must cooperate with each other in good faith on a claim.

10.5 ***No Exclusivity.*** Webhosting.net’s rights under this section do not affect other rights that Webhosting.net might have.

11. Disclaimer of Warranties

11.1 Customer acknowledges that inherent risks exist in Internet connectivity and that the use of the services could result in the loss of Customer privacy, confidential information, data, and property. Webhosting.net does not and cannot control the flow of information to or from its network and other portions of the Internet. Webhosting.net has no obligation to provide security or protection for Customer’s privacy, confidential information, or data other than as specifically stated in this agreement. Customer’s use of the website and services is entirely at Customer’s own discretion and risk. Webhosting.net furnishes the website and services “as is” and without warranties or conditions, statutory or otherwise, of any kind.

11.2 Webhosting.net:

11.2(A) Expressly disclaims all warranties—whether express, implied, or statutory—including warranties of (1) noninfringement, (2) title, (3) merchantability, (4) fitness for a particular purpose, (5) quiet enjoyment, (6) absence of

viruses, (7) results, (8) workmanlike effort, (9) quality, (10) noninterference, and (11) accuracy of informational content;

11.2(B) Expressly disclaims all warranties—whether express, implied, or statutory—arising from a course of dealing, usage, or trade practice;

11.2(C) Does not warrant that the services will meet Customer’s requirements, expectations, or that their operation will be timely, uninterrupted, secure, or error-free, or that any defects will be corrected; and

11.2(D) Does not warrant or make any representation regarding the use or the results of the use of the services in terms of its accuracy, suitability, reliability, timeliness, completeness, or otherwise.

11.3 Customer assumes total responsibility for Customer’s and customer end users’ use of the services.

12. Disclaimer of Damages

12.1 Except as required by law or caused by Webhosting.net’s gross negligence or willful and wanton misconduct, Webhosting.net will not be liable to Customer for any direct, indirect, incidental, special (including consequential), reliance, punitive, or exemplary damages that result from Customer’s use or inability to use the services or from any damages resulting from any failure of performance of the services. Webhosting.net will have no liability for damages arising from downtime or other unavailability of services.

12.2 This disclaimer includes compensation, reimbursement, or damages arising out of—or relating to—(1) the use of, or loss of use of, the services; (2) loss of profits; (3) loss of goodwill; (4) loss of, or damage to, data or content (including customer content); (5) cost of procurement of substitute goods or services; (6) subsequent or other commercial loss; or (7) for any other reason of any kind.

12.3 This disclaimer applies regardless of theory of liability and even if Customer advised Webhosting.net of the possibility of these damages.

13. Limitation of Liability

13.1 Unless required by law or caused by Webhosting.net’s gross negligence or willful and wanton misconduct, Webhosting.net will not be liable to Customer for breach of any express or implied warranty or condition, breach of contract, negligence, strict liability, or any other legal theory related to the site or services.

- 13.2 If—despite section 13.1—Webhosting.net is found liable to Customer for any damage or loss arising out of the services, Webhosting.net’s total cumulative liability to Customer will not exceed the amount of fees Customer actually paid Webhosting.net for the services during the three-month period immediately before the occurrence of the event-giving rise to Webhosting.net’s liability.

14. Allocation of Liability

The parties acknowledge that the disclaimer of warranties, disclaimer of damages, limitations of liability, and allocation of risk here are an essential element of the bargain between the parties, without which Webhosting.net would not have entered into this agreement. Webhosting.net’s pricing reflects this allocation of risk and these limitations.

15. Dispute Resolution

- 15.1 *In General.* Each party will allow the other a reasonable opportunity to comply before it claims that the other has not met the obligations under this agreement. The parties will first meet and negotiate with each other in good faith to try to resolve all disputes between the parties relating to this agreement or the services.

- 15.2 *Litigation Election.* Either party may elect to litigate the following type of case or controversy: (1) an action seeking equitable relief; or (2) a suit to compel compliance with this section. Webhosting.net may elect to litigate billing or payment disputes or collection matters.

- 15.3 *Mediation.* If the parties cannot settle a dispute through negotiation within 30 days, then either party may, by notice to the other party and the American Arbitration Association, demand mediation under the Commercial Mediation Rules of the American Arbitration Association. The parties will conduct the mediation in Miami-Dade County, Florida. Each party will bear its own costs in mediation and the parties will share equally between them all third-party mediation costs unless the parties agree otherwise in writing.

15.4 Arbitration

- 15.4(A) If the parties fail to settle within 30 days after service of a written demand for mediation, the parties will settle any unresolved dispute arising out of or relating to this agreement, or the breach of it, by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. A single arbitrator will preside over the arbitration and issue a final award on all issues submitted to the arbitrator. The parties will conduct the arbitration at a site located in Miami-Dade County, Florida. The parties will bear equally the costs of arbitration, including the fees and

expenses of the arbitrator, and each party will bear the costs associated with its case, subject to the arbitrator's right to award costs and fees to the prevailing party.

15.4(B) This section and the arbitrator's authority to grant relief are subject to (1) the Federal Arbitration Act, 9 U.S.C. §§ 1-16, *et seq.*; (2) the provisions of this agreement; and (3) the American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes. The arbitrator may not award punitive or exemplary damages, or damages otherwise limited or excluded in this agreement, and the arbitrator's decision will be final and binding. Any court of competent jurisdiction may confirm and enforce the arbitrator's award. The Federal Arbitration Act will govern any post-award proceedings.

15.4(C) Unless required by law, neither a party nor an arbitrator will disclose the existence, content, or results of any arbitration under this agreement without the advance written consent of both parties.

15.5 ***Webhosting.net's Right to Injunctive Relief.*** Customer acknowledges that Customer's breach of sections 3.2, 3.3, 3.4, or violation of any terms of the AUP would cause irreparable injury to Webhosting.net. Customer acknowledges that if a breach occurs, Webhosting.net will be entitled to seek temporary and preliminary injunctive relief without the necessity of proving actual damages or posting any bond or other security.

15.6 ***Waiver of Jury Trial.*** Both parties hereby waive the right to a trial by jury for any dispute arising between the parties arising out of these agreement or the services. This waiver will be enforceable up to and including the day that trial is to start, and even if the parties waive the arbitration provision of this section.

15.7 ***Limited Time to Bring Claims.*** No party may bring a legal action, regardless of form, arising out of this agreement or the services more than one-year after the cause of action arose. After one year, any legal action arising out of this agreement or the services is barred.

16. Suspension

16.1 Webhosting.net may suspend provision of services to Customer without liability if:

16.1(A) Webhosting.net reasonably believes that the services are being used, have been used, or will be used by Customer in violation of this agreement or any applicable law in any jurisdiction;

- 16.1(B) Customer does not cooperate with Webhosting.net's investigation of any suspected violation of this agreement or any applicable law in any jurisdiction;
 - 16.1(C) Persons with an ownership interest or a right to control Customer submit or make conflicting requests or demands on Webhosting.net about the services that Webhosting.net cannot resolve because of an internal dispute among the owners of Customer or because of a dispute that requires the involvement of legal counsel for Webhosting.net;
 - 16.1(D) Webhosting.net reasonably believes that services provided to Customer have been accessed or manipulated by a third party without Customer's consent or in violation of this agreement;
 - 16.1(E) Webhosting.net reasonably believes that suspension of the services is necessary to protect Webhosting.net's network or other Webhosting.net customers;
 - 16.1(F) A payment for the services is overdue by more than five days including the anniversary billing date (and in addition, Webhosting.net may continue to make the services available through the public network and may suspend the access to the private network if the fees are not paid within seven days of the due date);
 - 16.1(G) The continued use of the services by Customer may adversely impact the services, systems, or content of any other Webhosting.net customer;
 - 16.1(H) Webhosting.net reasonably believes that the use of the services by Customer may subject Webhosting.net, its affiliates, or any third party to liability; or
 - 16.1(I) Suspension is required by law.
- 16.2 Webhosting.net will give Customer reasonable advance notice of a suspension under this section and a chance to cure the grounds on which the suspension are based. However, Webhosting.net will not give reasonable advance notice if it determines, in its reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect Webhosting.net or its other customers from operational, security, or other risk, or a court or other judicial body orders the suspension. For purposes of this section, Webhosting.net will treat a violation of the flow-through provision the same as a violation of this agreement.
- 16.3 If Webhosting.net suspends Customer's right to access or use all or part of the services:

- 16.3(A) Customer remains responsible for all fees and charges Customer has incurred through the date of suspension;
- 16.3(B) Customer remains responsible for any applicable fees and charges for any services to which Customer has continued to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;
- 16.3(C) Customer will not be entitled to any SLA credits under the SLA for any period of suspension; and
- 16.3(D) Webhosting.net may terminate Customer's access to customer content stored in the services during a suspension, and Webhosting.net will not be liable to Customer for any damages or losses Customer may incur because of the suspension.

17. Term and Termination

- 17.1 ***Initial Term and Renewal Term.*** The initial term of this agreement is the period stated in the service order. It begins on the effective date of this agreement. After the initial term expires, this agreement will automatically renew for the same period on anniversary billing date unless terminated as provided below.
- 17.2 ***Termination for Convenience.*** Customer may terminate this agreement for convenience by giving written notice at least 30 days before the expiration of the then-current term. If Customer terminates this agreement for convenience, Customer must pay Webhosting.net all amounts due for the remainder of the then-current term within five days after the termination. If Customer gives less than 30 days written notice, the agreement will renew at the end of the then-current term and will terminate at the end of the renewal term (Customer will be liable for the renewal term). Webhosting.net may terminate this agreement for convenience on providing Customer with notice of nonrenewal at least ten days before the expiration of the initial term or any renewal term.
- 17.3 ***Termination for Breach.*** Webhosting.net may terminate this agreement immediately on notice if:
 - 17.3(A) Webhosting.net discovers that Customer provided Webhosting.net with inaccurate or incomplete account information or inaccurate or incomplete information about Customer's proposed use of the services;
 - 17.3(B) Customer was not at least 18-years old or did not have the legal capacity to enter into this agreement, install, or accept

services when Customer submitted the order if Customer is an individual, or the individual submitting the order for Customer did not have the legal right or authority to enter into this agreement, install, or accept services on behalf of Customer if Customer is an entity;

- 17.3(C) Persons with an ownership interest or a right to control Customer submit or make conflicting requests or demands on Webhosting.net about the services that Webhosting.net cannot resolve because of an internal dispute among the owners of Customer or because of a dispute that requires the involvement of legal counsel for Webhosting.net;
- 17.3(D) Customer failed to timely pay an invoiced amount, and Customer does not pay the undisputed overdue amount within five days of the due date;
- 17.3(E) Customer's use of the services or a customer end user's use of the customer offering violates this agreement, and Customer fails to remedy this violation within five days of Webhosting.net's written notice;
- 17.3(F) Customer or a customer end user violates the AUP;
- 17.3(G) Customer's account has been suspended for 30 days or more;
- 17.3(H) Customer has multiple violations of this agreement; or
- 17.3(I) Customer fails to comply with any other provision of this agreement and does not remedy the failure within 30 days of Webhosting.net notice to Customer describing the failure.

Webhosting.net will notify Customer in writing of termination under this section unless Webhosting.net determines, in its reasonable commercial judgment, that a termination on shorter or contemporaneous notice is necessary to protect its or its other customers from operational, security, or other risks. Webhosting.net will deem a breach of the flow-through provision as a breach of this agreement.

- 17.4 ***Access to Customer Content.*** The deletion of customer content is automatic on termination of this agreement. Thus, unless Webhosting.net determines otherwise, Customer will not have access to customer content, and Webhosting.net may immediately erase or delete customer content from its computer infrastructure after the effective date of termination of this agreement.
- 17.5 ***Effect of Termination.*** On termination of this agreement, Customer must discontinue use of the services and relinquish use of the IP

addresses and server names assigned to Customer by Webhosting.net and any other materials provided to Customer by Webhosting.net for the services, including pointing the DNS for Customer domain names away from the services. Webhosting.net will have no duty to provide any transition services or access to data except as expressly stated in section 17.4 above. Termination of this agreement will not affect the right of Webhosting.net to receive or recover any fees or other charges Customer owed to Webhosting.net before termination.

18. Confidentiality

- 18.1 Each party will hold in confidence information relating to the other that is known to be confidential or proprietary, or which a party has clearly marked as confidential or proprietary. A party will not disclose or use the other party's confidential information unless necessary to perform the services.
- 18.2 The obligations of confidentiality in this section will not apply to (1) information that is independently developed by the nondisclosing party, (2) lawfully becomes a part of the public domain, or (3) of which the nondisclosing party gained knowledge or possession free of any confidentiality obligation.
- 18.3 Webhosting.net may disclose information, including information that Customer, or customer end users, may consider confidential, in order to comply with a court order, subpoena, summons, discovery request, warrant, regulation, or governmental request. Webhosting.net assumes no obligation to inform Customer, or a customer end user, that Webhosting.net has provided the information according to a legal request. In some cases, the law may prohibit Webhosting.net from giving notice. Webhosting.net may also disclose this information when it is necessary for it to protect its business, or others, from harm.

19. U.S. Government Customers and U.S. Government Rights

- 19.1 Webhosting.net provides services for ultimate federal government end use solely under the following license rights to use, modify, reproduce, release, perform, display, or disclose – Government technical data and software rights related to the services include only those rights customarily provided to the public as defined in this agreement.
- 19.2 This customary commercial license is provided under the Federal Acquisition Regulation ("FAR") at 48 C.F.R. 12.211 (Technical Data) and 48 C.F.R. 12.212 (Software) for civilian agencies of the federal government, and, for Department of Defense transactions, the Defense Federal Acquisition Regulation Supplement ("DFARS") at 48 C.F.R. 252.227-7015 (Technical Data – Commercial Items), 48 C.F.R. 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

- 19.3 This U.S. Government Rights clause – consistent with 48 C.F.R. 12.211, 48 C.F.R. 27.212 (federal civilian agencies), or 48 C.F.R. 227.7202-4 (DoD agencies) – is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses federal governmental rights in computer software, computer software documentation, or technical data related to any services provided under this agreement.
- 19.4 If a government agency has a need for rights not conveyed under this section, it must negotiate with Webhosting.net to determine if acceptable terms for transferring those rights exist, and if so, Webhosting.net must agree to a mutually acceptable written addendum to this agreement specifically conveying those rights.

20. Equipment

- 20.1 Webhosting.net is not responsible for loss or damage to Customer's equipment and property (if any) stored or installed in a Webhosting.net data center facility or other Webhosting.net location. Customer will maintain insurance coverage on its equipment and property stored or installed at a Webhosting.net data center facility or other Webhosting.net location that covers any type of loss and includes a waiver of subrogation clause. Webhosting.net will not be liable for damage to or loss of any of Customer's equipment resulting from any cause, other than Webhosting.net's gross negligence or willful misconduct and then only in an amount not to exceed the replacement value of the damaged equipment, not to exceed the limits stated above. On termination of this agreement, Customer must arrange with Webhosting.net to remove its equipment from any Webhosting.net data center facility or other Webhosting.net location within 30 days of the termination of this agreement. If Customer fails to do so, Customer forfeits this equipment to Webhosting.net and Webhosting.net may dispose of this equipment without any liability to Customer, although Webhosting.net may recover any reasonable costs of disposition from Customer and Customer will reimburse Webhosting.net for these costs promptly on receipt of an invoice.
- 20.2 Customer will have no interest in any equipment supplied by Webhosting.net other than the right to use that equipment during the term while payments are current. Customer will be liable to Webhosting.net for any damage to this equipment caused by Customer or Customer's representatives, agents, employees, or contractors.

21. General Provisions

- 21.1 *Assignment and Delegation.* No party may assign any rights or delegate any performance under this agreement, except with the advance written consent of the other party. All assignments of rights are prohibited under this section, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or

any other manner. For purposes of this section, (1) a “change of control” is deemed an assignment of rights; and (2) “merger” refers to any merger in which a party participates, regardless of whether it is the surviving or disappearing entity. Any purported assignment of rights or delegation of performance in violation of this section is void.

21.2 **Waiver.** If a party fails to require the other to perform any term of this agreement, that failure does not prevent that party from later enforcing that term. If a party waives the other’s breach of a term, that waiver is not treated as waiving a later breach of that term. No waiver by any party of any of the provisions of this agreement will be effective unless in writing and signed by the waiving party. The parties may waive compliance with this provision only in a writing signed by both parties.

21.3 **Severability.** If any provision of this agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this agreement remain in full force, if the essential terms of this agreement for each party remain valid, binding, and enforceable.

21.4 **Notices.** All notices and other communications required or permitted under this agreement must be in writing and must be delivered personally or sent by certified or registered mail, or by overnight courier, postage prepaid, and emailed to the party’s address listed below:

Webhosting.net:

Webhosting.net Inc.
36 NE 2nd Street, Suite 550
Miami, Florida 44132
legal@webhosting.net

Customer:

A party may change this address by notice to the other party as stated in this agreement. A notice is considered as having been given (1) on the day of personal delivery, or (2) two days after the date of mailing. Notices must be given in the English language.

21.5 **Cumulative Remedies.** All rights and remedies provided in this agreement are cumulative and not exclusive, and the assertion by a party of any right or remedy will not preclude the assertion by the party of any other rights or the seeking of any other remedies available at law, in equity, by statute, in any other agreement between the parties, or otherwise.

21.6 **Legal Costs and Fees.** If a party breaches this agreement, the breaching party will reimburse the nonbreaching party for all actual legal costs and fees incurred in enforcing this agreement.

- 21.7 ***Choice of Law.*** The parties have signed and entered into this agreement in the State of Florida. The laws of the State of Florida – without giving effect to its conflicts of law principles – govern all matters arising out of or relating to this agreement, including its validity, interpretation, construction, performance, and enforcement.
- 21.8 ***Designation of Forum; Waiver of Forum Non Conveniens.*** Except as provided in section 15, a party bringing a legal action or proceeding against any other party arising out of or relating to this agreement or the transactions it contemplates will bring the legal action or proceeding in the United States District Court for the Southern District of Florida or in any court of the State of Florida where jurisdiction and venue is proper. Each party consents to the exclusive jurisdiction of (1) the United States District Court for the Southern District of Florida and its appellate courts, and (2) any court of the State of Florida where jurisdiction and venue is proper and its appellate courts, for all legal actions and proceedings arising out of or relating to this agreement or the transactions it contemplates. Each party acknowledges that the exclusive choice of forum stated in this section does not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.

Each party hereby waives (1) any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this agreement brought in any court of the State of Florida, or the United States District Court for the Southern District of Florida, and (2) any claim that any action or proceeding brought in any of these courts has been brought in an inconvenient forum.

- 21.9 ***Export Matters.*** If Customer chooses to use these services, Customer does so on Customer's own initiative and is responsible for complying with applicable laws. Customer will comply with all restrictions and regulations of the U.S. Department of Commerce and any other United States or foreign agencies and authorities regarding Customer's and customer end users' use of these services. Customer will not, in violation of any laws, transfer, or authorize the transfer of, any services (1) into, or for the benefit of, an entity located in any U.S. or U.N. embargoed countries; or (2) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals, or the U.S. Commerce Department's Table of Denial Orders or Entity List of proliferation concern, or the U.S. State Department's Debarred Parties List. By using these services, Customer states that Customer and customer end users are not located in, under the control of, or a national or resident of any of these countries or on any list. In addition, Customer and customer end users will not use the services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical, or biological weapons; weapons of mass destruction; or missiles; in a country listed in Country Groups D:4 and D:3, as stated in Supplement No. 1 to the Part 740 of the United States Export

Administration Regulations. Customer assumes responsibility for compliance with laws applicable to export, re-export, or import of products, technology, or technical data provided under this agreement and for obtaining required export and import authorizations. Customer and customer end users will not transfer to or through the services any data, materials, or other items controlled for export under the International Traffic in Arms Regulations (“*ITAR Data*”) or other applicable laws unless Webhosting.net has agreed to the transfer and (1) Customer has provided Webhosting.net at least ten days’ advance written notice that ITAR Data will be transferred to or through the services, (2) Customer or customer end user has received advance written authorization from the U.S. Government to transfer the ITAR Data to Webhosting.net, and (3) Customer agrees to help Webhosting.net to enable it to obtain U.S. Government permission. Customer is responsible, and will reimburse Webhosting.net, for all costs, expenses, or damages Webhosting.net incurs in connection with Customer and customer end user transfer of ITAR Data.

- 21.10 ***Force Majeure.*** Except for Webhosting.net’s rights under sections 16 and 17, no party will breach this agreement if the failure to perform the obligation is due to an event beyond that party’s control. Events beyond a party’s control include: (1) significant failure of a part of the power grid, (2) sabotage, (3) denial of service attack, (4) significant failure of the Internet, (5) natural disaster, (6) war, (7) riot, (8) insurrection, (9) epidemic, (10) strikes or other organized labor actions, (11) terrorism, or (12) other events of a magnitude or type for which precautions are not generally taken in the industry. The party suffering a force majeure event must give prompt written notice to the other party, stating the period the occurrence is expected to continue, and will use diligent efforts to end the failure or delay and ensure the effects of the force majeure event are minimized. However, if the force majeure event continues beyond 30 days, the performing party may elect to terminate this agreement without incurring any liability.
- 21.11 ***Feedback.*** Webhosting.net encourages Customer to provide feedback about the services. However, Webhosting.net will not treat as confidential any suggestion or idea provided by Customer, and nothing in this agreement or in the parties’ dealings arising out of or related to this agreement will restrict Webhosting.net’s right to use, profit from, disclose, publish, or otherwise exploit any feedback, without compensation to Customer.
- 21.12 ***Third-Party Beneficiaries.*** This agreement does not and the parties do not intend it to confer any rights or remedies on any person other than the parties to this agreement. Unless otherwise agreed in writing, Webhosting.net will provide support to Customer only. Webhosting.net will not provide support to a customer end user, customer affiliate, third party, or third-party affiliate to whom Customer provides access to use the services or the customer offering.

- 21.13 ***Relationship of the Parties.*** The parties' relationship is that of independent contractors and not business partners. Nothing in this agreement creates a partnership, joint venture, agency, franchise, or employment relationship between the parties and the parties expressly disclaim the existence of any of these relationships between them. Neither of the parties is the agent for the other, and neither party has the right to bind the other to any agreement with a third party.
- 21.14 ***Common Carrier.*** Customer acknowledges that Webhosting.net (1) is solely acting as a common carrier in its capacity of providing services under this agreement, (2) is not a publisher of any material or information, and (3) has no right to edit or censor the material at the servers in use by the Customer. Webhosting.net is not responsible nor preapproves any of Customer's customer content. Webhosting.net will consider all material Customer submits for publication publicly accessible. Webhosting.net does not screen in advance Customer's material submitted to Webhosting.net for publication. Webhosting.net's publication of material submitted by Customer does not create any express or implied approval by Webhosting.net of this material, nor does it indicate that this material complies with the terms of this agreement.
- 21.15 ***Publicity; Marketing.*** Webhosting.net may reference Customer's entering into this agreement and its status as a customer in its marketing materials and in sales presentations. Subject to Webhosting.net's marketing rights, neither party may issue a news release, public announcement, advertisement, or other form of publicity relating to this agreement or the services without the advance written approval of the other party. Customer will direct any request for approval to Webhosting.net's Legal Department. Customer will not (1) market to customer end users or prospective customer end users using Webhosting.net's name, (2) represent to customer end users or prospective customer end users that they are or will become Webhosting.net customers, or (3) indicate to customer end users or prospective customer end users that Customer has any relationship with Webhosting.net other than that resulting from Customer's purchase of services.
- 21.16 ***Counterparts.*** The parties may sign this agreement in any number of counterparts. The parties will consider each counterpart an original and all counterparts, when taken together, will form the same agreement.
- 21.17 ***Signatures; Electronic Signatures.*** The parties may sign this agreement by fax or electronically instead of an original signature. The parties will consider fax or electronic signatures as original signatures that bind them to this agreement. Customer agrees that any affirmation, assent, or agreement Customer transmits through the website in response to a prompt is binding. Customer understands that when Customer clicks

on an "I agree," "I consent," or other similarly worded "button" or entry field using a mouse, keystroke, or other computer device, Customer's agreement or consent will be legally binding and enforceable, and constitute the legal equivalent of Customer's handwritten signature.

- 21.18 **Successors and Assigns.** This agreement inures to the benefit of, and is binding on, the parties and their respective successors and assigns. This section does not address, directly or indirectly, whether a party may assign its rights or delegate its performance under this agreement.
- 21.19 **Further Assurances.** Each party will take any actions, or sign any documents, necessary to effect or facilitate the purpose of this agreement.
- 21.20 **Voluntary Agreement.** The parties have signed this agreement voluntarily and for valid reasons, and in doing so do not and have not relied on any statement or promise by any other party, except those expressed in this agreement. The parties acknowledge that they have carefully read this agreement, discussed it with their attorneys or other advisors, understand all of the terms, and agree to be bound by it. The parties have relied on the advice of their attorneys or other advisors about the terms of this agreement, and waive any claim that the terms should be construed against the drafter.
- 21.21 **Entity Authority.** Each person signing this agreement on behalf of any entity states that he or she has full authority to sign this agreement on behalf of the entity and that party has taken all necessary actions. In addition, each entity party states that this agreement does not violate or breach that party's articles of incorporation, articles of organization, bylaws, operating agreement, or any other agreement or law by which that party is bound.
- 21.22 **Survival.** All provisions of this agreement that by their nature are intended to survive termination of this agreement will survive termination of this agreement.
- 21.23 **Language.** The official language of this agreement will be the English language and no translation into any other language may be used in its interpretation. All services, support, notices, designations, specifications, and communications will be provided in the English language.
- 21.24 **Entire Agreement.** This agreement makes up the sole agreement of the parties concerning its subject matter. It supersedes all earlier written or oral discussions, negotiations, proposals, undertakings, understandings, and agreements between the parties concerning the transactions contemplated in this agreement. No party may use any of the earlier or contemporaneous negotiations, preliminary drafts, or

previous versions of this agreement leading up to its signature and not stated in this agreement to construe or affect the validity of this agreement. No conditions, definitions, representations, or warranties concerning the subject matter other than as expressly stated in this agreement will bind either party. Each party acknowledges that no party made or relied on a representation, inducement, or condition not stated in this agreement.

- 21.25 *Amendment.* Webhosting.net may change the terms of this agreement on one or more occasions. Webhosting.net will use commercially reasonable efforts to notify Customer through the website of any changes. Changes will become effective when posted on the website. However, changes will not apply to ongoing disputes or to disputes arising out of events occurring before the posted changes. It is Customer's responsibility periodically to check the website for changes. If Customer continues to use the services following any change, Webhosting.net will consider Customer's continued use as acceptance of the change unless Customer notifies Webhosting.net in writing of Customer's disagreement within 15 days of the change. In Customer's written notice to Webhosting.net, Customer must identify each change Customer disagrees with and the nature of Customer's disagreement with each change identified. Webhosting.net will contact Customer within the next five business days to address Customer's issues and try to reach a mutually amicable resolution. If Webhosting.net is unable to resolve Customer's disagreement with the changes, Webhosting.net may terminate this agreement effective immediately (without any further charge to Customer) or terminate the agreement effective at the end of the then-current term without the changes taking effect. Webhosting.net must approve in writing any changes requested by Customer to any of the terms of this agreement.
22. **Usages.** In this agreement, the following usages apply:
- 22.1 Actions permitted under this agreement may be taken at any time and from time to time in the actor's sole discretion.
- 22.2 References to a statute will refer to the statute and any successor statute, and to all regulations promulgated under or implementing the statute or successor, as in effect at the relevant time.
- 22.3 References to numbered sections in this agreement also refer to all included sections. For example, references to section 6 also refer to sections 6.1, 6.1(A), etc.
- 22.4 In computing any period of time under this agreement, the day of the act, event, or default from which the designated period of time begins to run will be included, unless it is a Saturday, Sunday, or legal holiday. In that case, the period will begin to run on the next day that is not a Saturday, Sunday, or legal holiday, and the period will run until the

end of the next day afterwards that is not a Saturday, Sunday, or legal holiday.

- 22.5 In computing periods from a specified date to a later specified date, the words “from” and “commencing on” (and the like) mean “from and including,” and the words “to,” “until,” and “ending on” (and the like) mean “to but excluding.”
- 22.6 References to a governmental or quasi-governmental agency, authority, or instrumentality will also refer to a regulatory body that succeeds to the functions of the agency, authority, or instrumentality.
- 22.7 “A or B” means “A or B or both.” “A, B, or C” means “one or more of A, B, and C.” The same construction applies to longer strings.
- 22.8 “Including” means “including, but not limited to.”
- 22.9 *Garner’s Modern American Usage* (3d ed. 2009) applies to interpret usage, grammar, and syntax not otherwise addressed by this section.
23. **Definitions.** As used in this agreement, the following definitions – whether or not capitalized – apply:
- 23.1 “*Acceptable use policy*” or “*AUP*” means the acceptable use policy attached to this agreement and located at www.webhosting.net/terms.aspx (or any other location as Webhosting.net may designate).
- 23.2 “*Account information*” means billing information, contact information, payment information, and any other information of a similar nature provided to Webhosting.net by Customer.
- 23.3 “*Affiliate*” means any person that a party controls, that controls a party, or that is under common control with a party. For this definition, “control” means the ability to affect—directly or indirectly—the policies, management, and operations of an entity through the beneficial ownership of the securities or shares entitled to vote in the election of the directors—or, in the case of an entity that is not a corporation, of the election of the corresponding management authority—in the entity of (1) more than 50% of the securities or shares, or (2) the lesser percentage of securities or shares as is the maximum ownership permitted in the country where the entity exists.
- 23.4 “*Agreement*” means the (1) master services agreement (“*MSA*”), (2) SLA, (3) privacy policy, (4) IP address policy, (5) AUP, (6) service order, and (7) any relevant appendices. If any conflict or inconsistency exists between or among these documents, the documents will govern in the following order of priority; (1) service order; (2) SLA; (3) any relevant

appendices to the MSA; (4) MSA; (5) AUP; (6) privacy policy; and (7) IP address policy.

- 23.5 *“Anniversary billing date”* means the date of the month of the effective date except as provided in this definition. For example, if the effective date is July 15, 2015, then the anniversary billing date is the 15th of the month. If the anniversary billing date is a day in a month that does not exist in each month (e.g., the 31st), then the anniversary billing date will be the last day of the month. For example, if the anniversary billing date is the 31st, then in February, April, June, September, and November, the anniversary billing date will be February 28 or 29, depending on the year, and the 30th for April, June, September, and November.
- 23.6 *“Business day”* means Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Standard Time, excluding any U.S. Federal holiday.
- 23.7 *“Commercially reasonable efforts”* mean the efforts that a prudent person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible. However, a person required to use commercially reasonable efforts under this agreement will not be required to take actions that would result in a material adverse change in the benefits to that person under this agreement or to dispose of or make any change to its business, expend any material funds, or incur any other material burden.
- 23.8 *“Confidential information”* means generally any information that is maintained in confidence by or on behalf of either party (each, a disclosing party) and made available to another party (each, a receiving party), by or on behalf of the disclosing party, in connection with the parties’ dealings under this agreement, during the term of this agreement. However, a disclosing party will not need to designate information as confidential information if the nature of the information makes it generally considered confidential commercially, which includes information that relates to: (1) trade secrets or know-how; (2) finance or accounting; (3) technology, research, or development; (4) internal processes or procedures; (5) business, operations, or planning of it; (6) sales or marketing strategies; (7) the terms of any agreement, and the discussions, negotiations, or proposals related to it, including this agreement. Webhosting.net’s confidential information includes unpublished pricing information and terms of service, audit reports, compliance and certification reports, security reports, product development plans, data center designs, server configuration designs, and other proprietary information. Confidential information does not include Customer’s customer content that is hosted, stored, or transmitted using the services.
- 23.9 *“Customer”* means the individual or entity that (1) orders services; (2) pays for the services; and (3) agrees to the terms of this agreement by

clicking or checking the box presented with this agreement, installing or using the services, or electronically or manually signing this agreement.

- 23.10 *“Customer content”* means all data, software, and information, including data text, software, scripts, video, sound, music, graphics, and images that Customer or its affiliates create, upload, or transfer in connection with the services.
- 23.11 *“Customer end user”* means a third party or its affiliate that is an end user of a customer offering.
- 23.12 *“Customer offering”* means services created by Customer based in whole or in part on the services, which authorized third parties use.
- 23.13 *“Data center”* means a Webhosting.net data center facility or facilities.
- 23.14 *“Due date”* means the recurring date on which fees are due.
- 23.15 *“Effective date”* means the date on which the Customer accepts this agreement by clicking or checking the box presented with this agreement, installing or using the services, or electronically or manually signing this agreement.
- 23.16 *“Feedback”* means any suggestions, comments, improvements, or other feedback about the services that Customer or any affiliate provides to Webhosting.net either directly or indirectly through a Webhosting.net-controlled website or email address.
- 23.17 *“Fees”* means those amounts due to Webhosting.net in exchange for the performance of the services.
- 23.18 *“Flow-through provisions”* mean the terms of agreements for services provided by third parties that are included this agreement as required by providers of those services. The flow-through provisions apply only to the relevant services provided by third parties. The services provided by third parties are part of the services and are subject to the terms of this agreement as well as the flow-through provisions.
- 23.19 *“Initial term”* means the period identified in the service order that begins on the effective date and continues until the next anniversary billing date, unless terminated as provided in section 17.
- 23.20 *“Intellectual property”* means inventions, concepts, techniques, plans, designs, methodologies, procedures, programs, approaches, ideas, know-how, computer software, technology, writings, graphics, other works of authorship, trademarks, service marks, logos, trade names, and (in the case of the last four) the goodwill associated with each.

- 23.21 *“Intellectual-property right”* means any intellectual-property right or industrial-property right existing by law at the relevant time anywhere in the world, including the right to sue for present or past infringement of it. *“Intellectual-property right”* includes: (1) all rights (whether registered or unregistered) in: trade secrets; confidential information; inventions, patents; trademarks, service marks, and trade names; Internet domain names; copyrights; designs; rights of publicity; and mask works; (2) any application then pending for an intellectual-property right, including an application for a patent or to register a copyright or trademark; (3) any right to file an application for an intellectual-property right; and (4) any right to claim priority for an application for an intellectual-property right.
- 23.22 *“Internet protocol”* or *“IP”* means the basic rules and encoding specifications for sending data on the Internet.
- 23.23 *“IP address policy”* means the policy governing the use and provision of any IP addresses, which is located at www.webhosting.net/terms.aspx (or any other location as Webhosting.net may designate).
- 23.24 *“Law”* means all applicable provisions of a constitution, statute, regulation, ordinance, rule, judgment, order, or other obligation, requirement, or prohibition having legally-binding effect at the relevant time.
- 23.25 *“Parties”* means Webhosting.net and Customer, each individual a *“party”*
- 23.26 *“Payment method”* means the instrument acceptable to Webhosting.net for payment of fees to Webhosting.net.
- 23.27 *“Person”* means an individual or an entity (including partnerships and other associations, whether incorporated or unincorporated).
- 23.28 *“Personally identifiable information”* or *“PII”* means information that can be used to identify, contact, or locate a single person or that can be used with other sources to uniquely identify a single individual.
- 23.29 *“Privacy policy”* means the terms governing the use of PII, which is located at www.webhosting.net/legal.aspx (or any other location as Webhosting.net may designate).
- 23.30 *“Private network”* means the portion of Webhosting.net’s network that provides the Customer with secure private network connectivity from Customer’s private backend network directly to Customer servers and data storage devices on Webhosting.net’s internal network and to other services.

- 23.31 *“Public network”* means the portion of Webhosting.net’s network that provides public Internet access to Customer servers and data storage services on Webhosting.net’s network.
- 23.32 *“Renewal term”* means the period beginning after the last day of the initial term or the renewal term and extending until the next anniversary billing date unless terminated as provided in section 17.
- 23.33 *“Service order”* means orders for specific services on Webhosting.net’s standard service order forms that may include a new order for a service or an upgrade or a downgrade of a service. Each service order will be issued and accepted by the parties according to the terms of this agreement. Each service order will contain specific provisions for fees, payment terms, features, locations, descriptions of service, duration, and other terms as appropriate. Service orders do not apply to third-party services.
- 23.34 *“Services”* means those services Webhosting.net will provide to Customer as listed in the service order or added by Customer in the future.
- 23.35 *“Service level agreement”* or *“SLA”* means the service level agreement, which is located at www.webhosting.net/terms.aspx (or any other location as Webhosting.net may designate).
- 23.36 *“Site”* means www.webhosting.net (or any other location as Webhosting.net may designate).
- 23.37 *“SLA credits”* mean the credits for applicable qualifying service downtime as described in the service level agreement.
- 23.38 *“Term”* means the initial term plus any renewal term.
- 23.39 *“Third party”* means an individual or an entity that is not a Customer, Webhosting.net, or an affiliate of Webhosting.net.
- 23.40 *“Third-party services”* mean services that third parties provide directly to Customer. The definition of *“services”* does not include third-party services.
- 23.41 *“Third-party service agreements”* or *“TPS agreements”* mean agreements for third-party services that are directly between the Customer and the provider of the third-party services. These agreements are separate and independent from this agreement and Webhosting.net is not a party to these agreements.
- 23.42 *“Webhosting.net”* means Webhosting.net Inc., a Florida corporation.

[Signatures on Next Page]

By clicking or checking the box presented with this agreement, signing the service order, or installing or using the services, Customer (1) has accepted this agreement in its entirety; (2) agrees to be bound by this agreement as amended on one or more occasions; and (3) has a legal right to enter into this agreement (and if Customer is an entity, then the individual who signs this agreement has the authority to bind Customer). The most current version of this agreement is located at <http://webhosting.net/pdf/Master-Services-Agreement.pdf>. If Customer does not agree with all the terms of this agreement and does not agree to be bound by this agreement, Customer should not click or check the box presented with this agreement, sign the service order, or install or use the services.

The parties signed this agreement on the effective date. Despite the signature blocks below, Webhosting.net and Customer acknowledge that they are already bound by the terms of this agreement and that manually signing this agreement is for record keeping purposes only. Manually signing this agreement does not amend or supersede any of the existing terms of this agreement.

Webhosting.net:

WEBHOSTING.NET INC.,
a Florida corporation

By: _____
Name: _____
Title: _____

Customer:

By: _____
Name: _____
Title: _____

Service Level Agreement

This service level agreement (“*SLA*”) is incorporated into the master services agreement (“*MSA*”) and applicable to all services delivered to customers. This SLA does not apply to the availability of third party services, which are subject to the TPS agreements. This SLA is binding only on the Customer and Webhosting.net and does not apply to any third parties, including customer end users. **The issuance of SLA credits is the sole remedy of Customer and Webhosting.net’s sole obligation for any failure by Webhosting.net to satisfy the requirements listed in the SLA.**

1. **Definitions.** In addition to the definitions in the MSA, the following definitions also apply to this SLA:

- 1.1 “*Claimed outage*” means the period (measured in minutes) during which Customer claims a loss of service during a measurement period as reported using the approved procedure.
- 1.2 “*Excluded minutes*” means the period of any outage measured in minutes due to the exclusions listed in the SLA credit exclusion in the measurement period.
- 1.3 “*Measurement period*” means the relevant initial term or renewal term.
- 1.4 “*Qualifying outage minutes*” mean the aggregate of all minutes of a verified outage during a measurement period, less any excluded minutes in that measurement period.
- 1.5 “*Services*” means the services ordered by Customer and accepted by Webhosting.net as provided in the MSA.
- 1.6 “*Loss of services*” means the Customer’s inability to connect to the Webhosting.net data center providing the services to access either (1) the Customer’s account or (2) a service. If Customer can connect to one of the Webhosting.net data center to access either the Customer’s account or any of the services, there is no loss of services, regardless if Customer can use the customer content.
- 1.7 “*Verified outage*” means a claimed outage for a particular service that Webhosting.net has verified using its monitoring logs of accessibility of the Webhosting.net data center or any of the services.

2. **SLA Credit Claim**

- 2.1 To claim a credit, the Customer will follow the approved procedure within 7 days of the end of the claimed outage.
- 2.2 Webhosting.net will review the claim and will issue any credit for verified outages as provided below.

3. Service Commitments

- 3.1 **Public Network.** Webhosting.net will use commercially reasonable efforts to provide a service level of 100% for the public network.
- 3.2 **Private Network.** Webhosting.net will use commercially reasonable efforts to meet the service level of 100% for the private network.

4. SLA Credits

- 4.1 For each 30 continuous minute period of qualifying outage minutes for a service in a measurement period, Webhosting.net will provide a SLA credit of 5% of the fees for the relevant service that was subject to the loss of service during the measurement period.
- 4.2 Any period of qualifying outage minutes for a service that is less than 30 continuous minutes will not be eligible for an award of SLA credits.
- 4.3 The Customer cannot combine alleged claimed outages for different services (such as public network and private network) to meet this calculation. The calculation of SLA credits for failure of hardware replacement or hardware upgrade will be as listed respectively, in Table A and Table B.

5. **Approved Procedure.** Customer is eligible to receive SLA credit, subject to the following process:

- 5.1 The Customer's identified master administrative user will report a claimed outage by opening a ticket on the site. The ticket must include service type, IP address, dates and times, error messages received (if any), contact information, and full description of the interruption of service including logs, if applicable.
- 5.2 To receive a SLA credit, Customer must submit a report of claimed outages to Webhosting.net within 7 days of the end of the claimed outage after the technical issues have been resolved.
- 5.3 Webhosting.net will review claimed outages against verified outages.
- 5.4 Webhosting.net's determination of SLA credits is final.
- 5.5 Customer agrees to pay all invoices in full while Webhosting.net reviews a claimed outage or determines a SLA credit.
- 5.6 Webhosting.net will communicate the SLA credits to Customer through Webhosting.net accounting and will update the ticket. However, Customer understands that it may not use the SLA credit to reduce the payment due in a renewal term below zero. Webhosting.net will apply the SLA credits to the Customer's future invoices for the relevant services subject to Webhosting.net's standard policies.

6. Ineligible Customers

- 6.1 Customers who at the time of the report of the claimed outage are not current on their payment of the fees for the services do not qualify for SLA credits for the claimed outages.
- 6.2 In addition, Customers who have not paid their fees when due for the services three or more times in the previous 12 months do not qualify for SLA credits.

7. Use of SLA Credits

- 7.1 Customer may solely use SLA credits for future payments due for the particular service or failure of other obligations (such as hardware) for which Webhosting.net issues service credits.
- 7.2 Customer will not sell or transfer SLA credits to other parties.
- 7.3 Customer cannot use SLA credits until Customer resolves any Customer violations of the MSA to Webhosting.net's reasonable satisfaction.
- 7.4 Webhosting.net will assess a one-time charge of \$50 per incident against any Customer who makes false or duplicative claims for claimed outages. False and duplicative claims are also a violation of the MSA and may result in a suspension of services.
- 7.5 SLA credits will expire on the termination or expiration of the MSA.

8. SLA Credit Exclusion. SLA credits do not apply for periods during which the services are not available for the following reasons:

- Webhosting.net or its third party service providers performing system upgrades, enhancements, and routine maintenance activities that are announced on the site on two days' advance notice or for maintenance Webhosting.net determines to be an emergency on notice provided through the site;
- Customer use of the services or any customer end user's use of the customer offering in violation of the MSA;
- Issues relating to customer content;
- Problems with Customer's access to the Internet;
- System administration, commands, file transfers performed by Customer representatives;
- Events described in the Force Majeure provision;

- Suspension of Customer’s access to the services as provided in the MSA;
- Violation of the AUP;
- Problems caused by Customer’s use of the services or any customer end user’s use of the customer offering after Webhosting.net advised Customer or any customer end user to modify the use, if Customer or any customer end user did not modify its use as advised;
- Problems arising from Customer or any third party’s software, hardware, or other technology or equipment.

9. Special Obligations relating to Hardware Replacement and Hardware Upgrades

9.1 *Hardware Replacement.* Webhosting.net will use commercially reasonable efforts to replace failed hardware and hardware components located within Webhosting.net’s data center at a service level of two hours after Webhosting.net verifies Customer’s notification of a hardware failure. This response period does not include time required to reload the operating system or applications. If the installation does not meet this service level, Customer will be eligible for SLA credits as provided in Table A below for the future fees directly related to the hardware if the Customer follows the approved procedure.

Table A: Hardware Replacement	
Response Period	SLA Credit
2 hours or less	N/A
2.1 to 6 hours	20%
6.1 to 10 hours	40%
10.1 to 14 hours	60%
14.1 to 18 hours	80%
18 hours +	100%

9.2 *Hardware Upgrades.* Webhosting.net will use commercially reasonable efforts to ensure that it begins and completes all planned hardware upgrades at a service level within two hours of hardware upgrade maintenance periods that Webhosting.net scheduled and confirmed in

advance through the site. This response period does not include time requested to reload the operating system or applications. If the installation does not meet this service level, Customer will be eligible for SLA credits as provided in Table B below for the future fees directly related to the hardware upgrade if the Customer follows the approved procedure.

Table B: Hardware Upgrade	
Response Period	SLA Credit
2 hours or less	N/A
2.1 to 6 hours	20%
6.1 to 10 hours	40%
10.1 to 14 hours	60%
14.1 to 18 hours	80%
18 hours +	100%

Privacy Policy

Created: June 14, 2014

Last Updated: April 6, 2015

Webhosting.net takes your privacy very seriously, and Webhosting.net uses great care in keeping the information of the users of the website (including customers) private and secure. To demonstrate its firm commitment to privacy, Webhosting.net has created the following policy to explain its policies and procedures in relation to all data collected. In this privacy policy, Webhosting.net describes the information it collects; how it uses, discloses, and shares your information; and how Webhosting.net protects your information. This privacy policy does not apply to third-party services, which are governed by their own privacy policies.

Children's Guidelines

Webhosting.net requires that all account holders be 18-years old or older. Webhosting.net does not provide children with access to any services in which any personal data is collected beyond the collection of a visitor's IP address and session status.

If Webhosting.net becomes aware that any child has accessed Webhosting.net's non-publicly available website, Webhosting.net will terminate the account through which the child gained access.

Persons under 13-years old may not submit or post information to or on Webhosting.net's website. Webhosting.net does not knowingly collect personal information from children under 13-years old. Webhosting.net services are open only to persons over 18-years old.

If Webhosting.net has collected any information from or about anyone under 13-years old, please contact us immediately at support@webhosting.net.

Types of Data Webhosting.net Collects

Webhosting.net collects data related to its users through the following methods:

- Automated means such as communication protocols and cookies
- Online registration and online signup forms
- Sales inquiries and transactions
- Online customer communications
- Offline communications and interactions
- Third-party sources of information

Depending on the method of collection and use, the data collected may include:

- Information about the user from forms, registrations, and transactions (such as name, title, address, company, phone number, and email address);
- Financial/transaction information (such as credit card number, card verification value (CVV), credit card expiration date, and other payment information (including bank account information depending on method of payment));
- Information about use of the website (such as electronic communications protocols, webpages visited, and cookies); and
- User preferences and privileges.

Electronic Communications Protocols and Cookies

Webhosting.net may receive data from you as part of the communication connection itself through the standard electronic greeting between your computer and Webhosting.net's servers. This information often consists of network routing (where you came from), equipment information (browser type), internet protocol address, date, and time. Webhosting.net's server will also query your computer to see if there are "cookies" previously set up by Webhosting.net to facilitate login or other website navigation procedures. A "*cookie*" is a small piece of information sent by a webserver to store in a web browser so it can later be read back from that browser.

Cookies: Some parts of the website use cookies (including signup forms) to collect information about visitors' use of the website and to facilitate return visits. The information collected from cookies is tracked to enhance security and to improve the functionality of the website by avoiding duplicate data entry, facilitating navigation, and increasing the relevance of content.

Cookies on the website may collect the following information: a unique identifier, user preferences and profile information used to personalize the content that is shown, and user information to access user forums. Some cookies Webhosting.net uses may remain on the user's computer after the user leaves the website, but the majority is set to expire within 30 to 365 days. Certain tools may have some cookies that have a longer duration. Cookies may also be of benefit to you by creating a more streamlined login process, keeping track of shopping cart additions, or preserving order information between sessions. In the future, as Webhosting.net enables further customization of the website, cookies will help in ensuring that information provided to you will be the most relevant to your needs.

Browsers provide you with information and control over cookies. You can set your web browser to alert you when a cookie is being used. You can also get information on the duration of the cookie and what server your data is being returned to. You then have the opportunity to accept or reject the cookie. Additionally, you can set your browser to refuse all cookies or accept only cookies returned to the

originating servers. You can generally disable the cookie feature on your browser without affecting your ability to use the website, except in some cases where cookies are used as an essential security feature or to provide functionality necessary for transaction completion.

Webhosting.net may also engage third parties to track and analyze nonpersonally and personally identifiable website data and to serve advertisements. To do so, Webhosting.net may permit third parties to place cookies on devices of users of the website, where permitted by law, and, subject to your right to opt-out through the website. Webhosting.net uses the data collected by these third parties to help it administer and improve the quality of the website and to analyze website usage. These third parties may combine the information that Webhosting.net provides about you with other information that they have collected. Webhosting.net requires these third parties to use your information according to this privacy policy.

Customer is solely responsible for any processing or international transfer of all personally identifiable information (“*PII*”) in the customer content and will comply with all applicable rules, laws, and regulations in all applicable regions or countries related to the transfer of the PII.

Google Analytics

Webhosting.net uses a tool called “Google Analytics” to collect information about the use of www.webhosting.net, such as how often users visit the website, what webpages they visit when they do so, and what other websites they used before coming to the website. Google Analytics collects only the IP address assigned to you on the date you visit www.webhosting.net, rather than your name or other identifying information.

Webhosting.net has implemented a feature of Google Analytics referred to as Google Analytics Demographics and Interest Reporting on this website. The Google Analytics Demographics and Interest Reporting feature allows Webhosting.net to collect data relating to the demographics (age and gender) and interests of visitors to this website. Webhosting.net collects this data to analyze how visitors engage with www.webhosting.net. Specifically, Webhosting.net uses this data to help recognize and understand user preferences, to make improvements to the website, to choose content and advertising to display to you, and for other business purposes that will allow Webhosting.net to better serve you.

Google Analytics plants a permanent cookie on your web browser to identify you as a unique user the next time you visit www.webhosting.net. Only Google, Inc. can use this cookie. The information generated by the cookie will be transmitted to and stored by Google on servers located in the United States.

Webhosting.net uses the information received from Google Analytics only to improve services on this website. Webhosting.net does not combine the information collected through the use of Google Analytics with PII.

Google's ability to use and share information collected by Google Analytics about your visits to this website is restricted by the [Google Privacy Policy](#). You can prevent Google Analytics from recognizing you on return visits to this website by disabling the Google Analytics cookie on your web browser by using the [Google Ads Settings Webpage](#) or using the [Google Analytics Opt-Out Browser Add-On](#).

The Data Webhosting.net Collects and How It Uses It

Webhosting.net collects data from users for the following purposes:

- To engage in transactions for service. Webhosting.net may collect and store the following as part of the transaction history: name; address; email; purchase details; and credit card/payment information. The majority of the data collected under this category is contact information. Webhosting.net may need to share some of this data (address and payment) with credit card clearinghouses, banking institutions, and other similarly situated agents, who may require the information in order to complete the transaction. (As used here, "agents" means persons or companies who act on behalf of or under the direction of Webhosting.net.)
- To provide future service and support. Information collected for this purpose is both contact data and information related to products and service/support requested. Webhosting.net uses this information to provide service, product update, and similar notices.
- To select content, data may be collected to help create website content and navigation that is most relevant and user friendly. This includes data collected because of website navigation, as well as data provided in forms.
- To respond to user inquiries and requests for information. This data includes registrations for online newsletters, opt-in mailing lists, and specific requests for further information.
- To respond to law enforcement organizations, government officials, third parties when compelled by subpoena, court order, or applicable law, or to report or prevent suspected fraudulent or illegal activity in the use of the services. Webhosting.net will notify Customer of the information request or submission as, and if, allowed.
- To Webhosting.net's contractors who provide services or perform functions on its behalf.
- To Webhosting.net's affiliates. If Webhosting.net does so, their use and disclosure of your PII will be subject to this privacy policy.
- If Webhosting.net is acquired by or merged with another company, if substantially all of its assets are transferred to another company, or as part of a bankruptcy proceeding, Webhosting.net may transfer the information it has collected from you to another entity if applicable.

- To provide various Webhosting.net communities with relevant product alerts and updates. These updates are related to product releases, prices, terms, special offers, and associated campaigns. This data is sent when the program member signs up for the relevant program or online account.
- To better tailor marketing to user needs. Webhosting.net may use information from user purchases and user-specified requirements to provide you with timely and pertinent notices of Webhosting.net's product releases and service developments that address your needs and specified requirements or that are similar to products and services the user previously purchased from Webhosting.net.
- To better respond to requests for service or quotes for product and equipment purchase. Webhosting.net will pass contact information to the appropriate Webhosting.net salesperson for follow-up related to Webhosting.net products or services.
- From referral "tell a friend" function (if available). If a user elects to use Webhosting.net's referral service for informing a friend about the website, Webhosting.net asks them for the friend's name and email address. Webhosting.net will automatically send the friend a one-time email inviting them to visit the website and send a copy of this email to the user. The email sent will clearly identify the sender of the email. Webhosting.net uses this data solely to send this one-time email. Webhosting.net will not store the email sent to a friend at a user's request for additional processing.
- Because of your participation in interactive discussions and public forums (if available). There may be parts of the website that permit you to participate in interactive discussions. Some of these may be moderated; all are subject to access for technical reasons. Webhosting.net does not control the content that users post and some may serve as public discussion forums. As in any interactive forum open to many users, you should carefully consider whether you wish to submit data and should tailor any other content submitted accordingly.

Customer Portal, Customer Customization, Preferences, and Opt-Out

Webhosting.net gives Customer the ability to create users, add/delete users, add/delete user privileges, and opt in (or out) of services and mailing lists through the customer portal. The customer portal provides Customer with control over Customer's preferences for electronic information delivery.

Webhosting.net also provides Customer's master user with the ability to manage Customer's account information. Webhosting.net maintains the data and allows Customer's master user to update it at any time. To change this information, you must be a current customer and login with a user ID and password and follow the prompts to "update my profile" on the customer portal. Alternatively, you may contact us at <http://webhosting.net/contactus.aspx>. Webhosting.net continues to

expand the profile of services and information that you may access and update through the customer portal.

Please understand that some email communications are not subject to general opt-out. These include communications about downloads; communications about sales transactions; information about software updates, patches, and fixes; disclosures to comply with legal requirements; and network upgrades or other related maintenance for service.

If an individual's PII is to be (1) disclosed to a third party who is not an agent, or (2) used for a purpose that is incompatible with the purpose for which it was originally collected or later authorized by the individual, then Webhosting.net will notify the individual before the disclosure. The individual may opt-out of having Webhosting.net disclose the PII by responding to the email or author of the notice, where the information will be clearly listed.

"Do Not Track" Compliance

Do Not Track ("*DNT*") is a privacy preference that you can set in your web browser. DNT is a way for you to inform websites and services that you do not want certain information about your webpage visits collected over time and across websites or online services. Webhosting.net is committed to providing you with meaningful choices about the information we collect and that is why we provide you the ability to opt-out. However, we do not recognize or respond to any DNT signals as the Internet industry works toward defining exactly what DNT means, what it means to comply with DNT, and a common approach to respond to DNT.

Security

Webhosting.net is concerned with the security of the data it has collected and uses commercially reasonable efforts to prevent unauthorized access to that information. These efforts include policies, procedures, employee training, physical access, and technical elements relating to data access controls. In addition, Webhosting.net uses standard security protocols and mechanisms to facilitate the exchange and the transmission of sensitive data, such as credit card details. Webhosting.net does not process PII in a way that is incompatible with the purposes for which it has been collected or later authorized by the individual.

If PII is acquired, or is reasonably believed to have been acquired, by an unauthorized person and applicable law requires notice, Webhosting.net will notify the affected individual of the breach by email or ticket on the customer portal or, if Webhosting.net is unable to contact the individual by email or ticket on the customer portal, then by regular mail. Webhosting.net will notify the affected individual promptly, consistent with the legitimate needs of law enforcement and any measures necessary for Webhosting.net or law enforcement to determine the scope of the breach and to ensure or restore the integrity of the data system. Webhosting.net may delay notifying the affected individual if Webhosting.net or a law enforcement agency determines that notice will impede a criminal investigation, and in that case, Webhosting.net will not notify the

affected individual until Webhosting.net or the agency determines that notice will not compromise the investigation.

Enforcement

Webhosting.net has established internal mechanisms to verify its ongoing compliance with its privacy policy. Webhosting.net also encourages individuals covered by this privacy policy to raise any concerns about Webhosting.net's processing of personal information by contacting Webhosting.net at the address below. Webhosting.net will seek to resolve any concerns in a timely manner.

Policy Updates

If Webhosting.net is going to use your PII in a manner different from that stated at the time of collection, Webhosting.net will notify you by email. In addition, if Webhosting.net makes any material changes in its privacy practices that do not affect the PII already stored in its database, it will notify you by email or post a prominent notice on the website notifying users of the change. In some cases, when Webhosting.net posts the notice, it will also email users who have opted to receive communications from Webhosting.net, notifying them of the changes in its privacy practices. Webhosting.net may update this privacy policy on one or more occasions to describe how new website features affect Webhosting.net's use of your PII and to let you know of new control and preference features that Webhosting.net provides.

California Residents – Your California Privacy Rights

Under California Civil Code Section 1798.83, residents of the State of California have the right to request from companies conducting business in California certain information relating to third parties to which the company has disclosed certain categories of personal information during the preceding year for the third parties' direct marketing purposes. Alternatively, the law provides that a company may comply, as Webhosting.net does, by disclosing in its privacy policy that it provides consumers choice (opt-out or opt-in) regarding sharing personal information with third parties for third parties' direct marketing purposes, and information on how to exercise that choice. As stated above in this privacy policy, Webhosting.net provides you a choice before sharing your personal information with third parties for their direct marketing purposes. If you do not opt-in or if you choose to opt-out when Webhosting.net offers that choice, Webhosting.net does not share your information with that identified third party for its direct marketing purposes.

If you are a California resident and you have questions about Webhosting.net's practices about sharing information with third parties for their direct marketing purposes and your ability to exercise choice, please contact us using the contact information listed below. You must put the statement "Your California Privacy Rights" in the subject filed of your email or include it in your writing if you choose to write to us at the designated mailing address. You must also include your name, street address, city, state, and ZIP code. Webhosting.net is not responsible for notices you do not label or send properly, or do not have complete information.

Contact Information and Inspection Rights

You should address questions, concerns, or comments about this privacy policy to:

Webhosting.net, Inc.
36 NE 2nd Street, Suite #550
Miami, FL 33132
Web: <http://webhosting.net/contactus.aspx>
Email: support@webhosting.net
Phone: 1-800-709-9110 (or 1-305-400-6700)
Fax: 1-305-433-7764

If at any time you decide that you no longer desire that Webhosting.net hold, use, correct, or supplement any of your PII, receive information regarding any PII processed in relation to you, or you wish to change the manner in which your PII may be used, please let Webhosting.net know by contacting it.

IP Address Policy

IP Address Ownership

All IP addresses that Webhosting.net assigns to customers remain the sole property of Webhosting.net, and are to be used exclusively on equipment located in the Webhosting.net datacenter and connected to the Webhosting.net network. If a customer cancels its services, the customer may not take the IPs that they used with them; instead, Webhosting.net will reclaim the IPs and reissue them to other customers in the future.

Customer-Provided IP Addresses

Customers may provide their own Regional Internet Registries (RIR) issued IP addresses, subjected to certain technical limitations and verifications of ownership that Webhosting.net's networking department will assess at the time of the request. Customer owned IP prefixes must be specified on a Letter of Authority (LOA) presented to Webhosting.net, and once approved, will be announced via the Border Gateway Protocol (BGP) on the customer's behalf and routed to the customer's servers. They always remain the property of the customer. At the customer's request, or should the customer cancel its services, Webhosting.net will stop announcing and routing those IPs. While Webhosting.net will make commercially reasonable efforts to ensure BGP prefixes are accepted by all upstream ISPs, Webhosting.net cannot guarantee global reachability for customer-owned IPs.

Review / Justification / Efficiency Guidelines

Because IPv4 addresses are a scarce resource, RIRs require ISPs to document that they are efficiently using existing assigned addresses and are planning efficient use of any addresses begin requested. RIR policies and RFC 2050 promote conservation and deter wasteful use or stockpiling of IP space. Webhosting.net is required to comply with these policies when it goes to the RIRs to request more IP addresses to allocate, which means Webhosting.net must collect this information from its customers; failure to do so could result in the denial of any future requests Webhosting.net makes to its RIRs.

All customer IP address requests are subjected to review by Webhosting.net to ensure efficient use and are not guaranteed to be approved. During the review, Webhosting.net will require customers to provide details about how each IP address will be used and technical justification why additional unique IP addresses are needed. When applicable, Webhosting.net may take steps to verify the validity of the information provided, including network scanning and server configuration inspection.

An initial review may take up to 2 business days, and depending on size and complexity may require additional time for completion. Accounts with open abuse tickets will have their IP requests held for processing until all abuse issues have been resolved.

Customers may continue to use assigned IP addresses as long as the usage information presented remains valid. Webhosting.net may request a review of customer IP utilization at any time, and will reclaim resources no longer found to be efficiently used.

Privacy of IP Address Information

Webhosting.net is required to provide customer reassignment information for all IP addresses, and does so by publishing publically viewable “rwhois” records. Details provided by customers during the IP address request process may be shared privately with the RIRs when needed to demonstrate Webhosting.net’s adherence to policies of efficient use.

Acceptable Use Policy

General Statement

Webhosting.net supports the uncensored flow of information and ideas over the Internet medium and does not actively monitor customer activity under normal circumstances. Moreover, Webhosting.net does not exercise editorial control over the content of any website, email transmission, newsgroup, or other material created or accessible through the services, except for certain proprietary websites. However, Webhosting.net will not tolerate certain conduct from its customers and others who use its services. The purpose of this AUP is to inform all customers of the acceptable uses of the services. Webhosting.net is committed to encouraging the use of the Internet through its services and third party services, but the use must be consistent with the laws and regulations governing use of the Internet and must protect the right of its other customers to use its services. Webhosting.net designed this AUP to achieve these goals. The Customer agrees to comply with the AUP and is responsible for the use of the services and third party services by all entities and individuals whom Customer permits to use the services, third party services, or the customer offering. In addition to its rights under section 20.1 of the terms of service, Webhosting.net has the right to amend the terms of the AUP at any time, effective when posted to the site. Customer's use of the services or third party services after Webhosting.net posts changes to the AUP will form acceptance of any changed or additional terms.

Public Network

Webhosting.net's public network provides public Internet access to Customer servers and data storage services on Webhosting.net's network. Webhosting.net grants all customers equal access to the public network.

Private Network

Webhosting.net's private network provides Customer with secure private network connectivity from Customer's private backend network directly to Customer servers and data storage devices on Webhosting.net's internal network and to other services. Customer may use the private network to upload/download content, administer Customer servers and data storage devices, transmit information between Customer servers and data storage devices, transmit information between Customer's private backend servers and Customer servers and data storage devices provided by Webhosting.net, administer the customer content, retrieve data, access server consoles, and otherwise manage the customer content. Customer can also use the private network for access during periods of temporary suspension of services to customer as provided under the master services agreement.

IP Addresses

Customer acknowledges and agrees to comply with the IP address policy, which Webhosting.net may amend on one or more occasions. Except as stated in the IP

address policy, Webhosting.net owns and manages all IP addresses assigned to Customer. These IP addresses are nontransferable, and Customer retains no ownership or transfer rights to these IP addresses. Webhosting.net assigns all IP addresses on a per VLAN, per server basis. Customer's attempt to use any unallocated IP address or any IP addresses on VLANs not assigned to Customer is a violation of this AUP.

Prohibited Uses

The following list provides a number of general prohibited uses of the services or third party services that are violations of this AUP. Please understand that the following list does not represent a comprehensive or complete list of all prohibited uses.

1. **Unlawful Activities:** The services or third party services will not be used in violation of any criminal, civil or administrative violation of any applicable local, state, provincial, federal, national, or international law, treaty, court order, ordinance, regulation, or administrative rule. This includes:
 - a. Child pornography
 - b. Unlawful gambling activities
 - c. Threats, harassment, and abuse of any individual, organization, or business
 - d. Fraudulent activities
 - e. Terrorist websites or other sites advocating human (or animal) violence and hate crimes based on race, gender, sexual orientation, religion, ethnicity, or country of origin
 - f. Unlawful high yield investment plans, Ponzi schemes, or linking to or advertising these schemes
2. **Child Pornography:** Specifically, the services or third party services will not be used to publish, submit, receive, upload, download, post, use, copy, or otherwise produce, transmit, distribute, or store child pornography.
3. **Unsolicited Email:** Webhosting.net prohibits the use of the services or third party services to send or receive mass unsolicited email ("SPAM"). This prohibition includes the direct sending and receiving of these messages, support of these messages through webpage, splash page, or other related sites, or the advertisement of these services. This prohibition also includes the falsifying of packet header, sender, or user information whether in whole or in part to mask the identity of the sender, originator, or point of origin, or knowingly deleting any author attributions, legal

notices, or proprietary designations or labels in a file that the Customer mails or sends.

4. **Email Bombing:** Webhosting.net prohibits the sending, return, bouncing, or forwarding of email to specified users in an attempt to interfere with or overflow email services.
5. **Proxy Email:** Webhosting.net prohibits the use of the services or third party services as a proxy email server to forward email to unrelated third parties.
6. **UseNet SPAM:** Webhosting.net prohibits the use of services to send, receive, forward, or post UseNet unsolicited email or posts. This prohibition includes UseNet services located within the Webhosting.net network or unrelated networks of third parties.
7. **Hacking:** Webhosting.net prohibits the use of the services or third party services for hacking, attacking, gaining access to, breaching, circumventing, or testing the vulnerability of the user authentication or security of any host, network, server, personal computer, network access and control devices, software, or data without the express written authorization of the owner of the system or network.
8. **Threatening Material or Content:** The services or third party services will not be used to host, post, transmit, or retransmit any content or material that harasses, or threatens the health or safety of others. In addition, Webhosting.net reserves the right to decline to provide services or third party services if Webhosting.net finds the content obscene, indecent, hateful, malicious, racist, defamatory, fraudulent, treasonous, excessively violent, promoting the use of violence, or otherwise harmful to others (including animals).
9. **Violation of Intellectual Property Rights:** The services or third party services will not be used to publish, submit/receive, upload/download, post, use, copy, or otherwise reproduce, transmit, retransmit, distribute, or store any content/material; or engage in any activity that infringes, misappropriates, or otherwise violates the intellectual property, privacy, or publicity rights of Webhosting.net or any person. Intellectual property, privacy, and publicity rights include any rights protected by any copyright, patent, service mark, trade dress, trademark, trade secret, right of privacy, right of publicity, moral rights, and any other intellectual property right now known or later recognized by statute, judicial decision, or regulation.
10. **Distribution of Malware:** Webhosting.net prohibits the storage, distribution, fabrication, or use of malware, including virus software, root kits, password crackers, adware, key stroke capture programs, and other programs normally used in malicious activity. However, Customer may request to use these programs in the normal ordinary course of business. Webhosting.net may approve these requests on a case-by-case basis.

Example: A security company using the services to analyze the latest root kit for new security analysis/software.

11. **Phishing:** Webhosting.net prohibits any activity designed to collect personal information (name, account numbers, usernames, passwords, etc.) under false pretenses. Splash pages, phishing forms, email distribution, proxy email, or any activity related to phishing activities may result in the immediate suspension of Customer's account.
12. **Violation of Agreements related to Third Party Services:** Webhosting.net prohibits any activity that violates any TPS agreements.
13. **Denial of Service:** Webhosting.net prohibits any activity to implement or assist in the implementation of denial of service attack. Webhosting.net prohibits the use of services for the organization, propagation, or control of denial of service attacks ("DoS") or distributed denial of service attacks ("DDoS"). Customers will not use the services to perform DoS or DDoS mitigation activities (such as service proxying or data scrubbing) that may result in attracting inbound denial of service attacks toward the services. Any relation to DoS or DDoS type activity is a direct violation of this AUP.

Reporting Violation of the Acceptable Use Policy

Webhosting.net accepts reports of alleged violations of this AUP by email sent to abuse@webhosting.net. Reports of alleged violations must be verified and must include (1) the name and contact information of the complaining party, (2) the IP address or website allegedly in violation, and (3) a description of the alleged violation. Unless otherwise required by law, such as the DMCA, Webhosting.net owes no duty to third parties reporting alleged violations. Webhosting.net will review all verified third party reports and will take the actions it deems appropriate in its sole discretion.

Webhosting.net will comply with and respond to valid (as Webhosting.net determines in its sole discretion) subpoenas, warrants, or court orders. If applicable law or regulation permit, Webhosting.net will forward to Customer any subpoenas, warrants, or court orders and Customer may respond. However, Webhosting.net reserves the right to respond to any subpoena, warrant, or court order if it is the named party in the subpoena, warrant, or court order.

Procedure for Addressing Violation of Acceptable Use Policy

If Webhosting.net becomes learns of an alleged violation of this AUP, it will initiate an investigation within 24–48 hours. During this investigation, Webhosting.net may restrict Customer's access to prevent further possibility unauthorized activity. If Webhosting.net finds the Customer in violation of this AUP, it may restrict, suspend, or terminate Customer's account or pursue other civil remedies. Webhosting.net also reserves the right to seek to recover any costs associated with the investigation of a substantiated AUP violation. If the violation is a criminal

offense, Webhosting.net will notify the appropriate law enforcement agency of the violation.

Webhosting.net does not issue SLA credits for any outages incurred through service disablement resulting from AUP violations, or outages incurred during investigation of possible violations.

Webhosting.net will hold the Customer liable for all costs Webhosting.net incurs because of the Customer's violation. This includes attorney fees and costs resulting from Postmaster responses to complaints from and the cleanup of unsolicited mailings, unauthorized bulk mailings, or news server violations.

The first violation will result in a cleanup fee of \$50 per complaint and Webhosting.net will review the Customer's account for possible immediate termination. A second violation will result in a cleanup fee of \$100 per complaint and immediate termination of the Customer's account. "Complaint" means (1) an email complaint sent directly to Webhosting.net, (2) an email complaint sent directly to an upstream provider or carrier, (3) a "SpamCop" listing, (4) a SPEWS listing, (5) an SBL listing, (6) an OpenRBL listing, or (7) a listing on any email "block list" that may result in the interruption of service to the Webhosting.net network.

The Customer who violates this AUP also will pay Webhosting.net an investigation fee of no more than \$125 per hour for the time Webhosting.net personnel must spend to investigate any violations in addition to the above-mentioned cleanup fees.

Decisions regarding the termination or suspension of an account are final. Webhosting.net will not negotiate regarding suspension or termination of an account or contract for breach of this AUP or the terms of service. On termination of an account or contract, the outstanding balance of that contract or account will immediately become due.

Disclaimer

Webhosting.net retains the right to refuse new service to any individual, group, or business. Webhosting.net also retains the right to discontinue service to customers with excessive or multiple repeated violations.