

**AccessHosting.com**  
**TERMS OF SERVICE**

1. **Legally binding agreement.** By ordering and/or using any service offered or provided by Access Hosting LLC, dba AccessHosting.com ("AccessHosting.com"), the individual or company registering for such service with AccessHosting.com ("Customer") accepts and agrees to, and intends to be legally bound by, these Terms of Service (which include all registration/order forms submitted by Customer and all policies available on the AccessHosting.com website ([www.AccessHosting.com](http://www.AccessHosting.com)), including, without limitation, Access Hosting's Acceptable Use Policy ("Policies"). AccessHosting.com may change its Terms of Services and/or any Policies from time to time upon notice to Customer that an updated version is available on the website. Continued use of any service thereafter constitutes Customer's legally binding agreement with such update.
2. **Description of services.** AccessHosting.com will provide Customer with access to and use of the services for which Customer has registered with AccessHosting.com. Such services are described in detail in the Statement of Work.
3. **Charges.** Customer will pay all charges for services set forth on the AccessHosting.com website. Charges are due monthly in advance of service, without setoff or deduction. Charges and billing for services other than those described on the website will be as agreed upon by AccessHosting.com and Customer. In addition to any other rights or remedies, AccessHosting.com may charge and collect a late charge and administrative fee on any unpaid amount due equal to one and one-half percent (1 and 1/2 %) of such amount for each month or partial month. All charges for services are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of services, all of which Customer will be responsible for and will pay in full. Customer will be responsible for any credit card or other payment processing fees imposed on AccessHosting.com with respect to any Customer payments. Customer will be liable for all costs and expenses (including reasonable attorney fees) incurred by AccessHosting.com in connection with collecting any charges or enforcing its rights under these Terms of Service.

#### 4. Billing arrangements

- 4.1 **Credit card required.** Unless otherwise approved by AccessHosting.com, Customer will provide AccessHosting.com with valid credit card information and pay the charges for services by such credit card. AccessHosting.com will charge Customer's credit card in advance of (i) for Customers that elect to prepay for 12 month periods, each anniversary of such period, and (ii) for month-to-month Customers, each month. AccessHosting.com will issue payment receipts promptly after payment of such charges.
  - 4.2 **No credit card required.** For Customers approved by AccessHosting.com, AccessHosting.com will invoice approximately thirty (30) days in advance of (i) for Customers that elect to prepay for 12 month periods each anniversary of such period, and (ii) for month-to-month Customers, each month. Payment is due, and Customer will pay such invoices, in full within thirty (30) days of the invoice date.
5. **Renewal and termination of service.** Service will continue, and will automatically renew on a 12-month or monthly basis, as applicable, until terminated as provided below.
    - 5.1 **Non-renewal.** Either party may terminate service by notifying the other party in writing at least thirty (30) days prior to the end of the then-current 12-month period, for 12 month Customers, or month, for month-to-month Customers. In the case of free trials, notifications provided by AccessHosting.com through the service indicating the remaining number of days in the free trial will constitute such notice of termination, and AccessHosting.com may terminate a free account if Customer does not first log on within thirty (30) days after registration.
    - 5.2 **Service interruption.** "Downtime" means a critical service-affecting system failure of the AccessHosting.com infrastructure arising out of the management or operation by AccessHosting.com that results in Customer's complete inability to use the services (excluding any network unavailability during system downtime scheduled by AccessHosting.com). Customer may terminate service immediately (and receive a refund of any prepaid charges) upon notice to AccessHosting.com within five (5) days following the end of a calendar month in the event that (i) Customer experiences more than eight (8) consecutive hours of Downtime due to any single event or (ii) Customer experiences more that 3.75 hours of Downtime in each of three (3) consecutive months. TERMINATION OF SERVICE AS PROVIDED IN THIS SECTION 5.2 IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DOWNTIME, PERFORMANCE PROBLEM, DATA LOSS OR INACCURACY, OR OTHER SERVICE OUTAGE OR UNAVAILABILITY.

**5.3 Breach and default by Customer.** AccessHosting.com may, in its sole discretion, elect to terminate service upon and after (a) Customer's failure to make timely payment in full of any charges, (b) any breach or noncompliance by Customer or any of its Users (as defined below) of any of the provisions of these Terms of Service (including any of the Policies); (c) Customer's failure to continue to function as a going concern or to operate in the ordinary course of business, or if Customer commits an act of bankruptcy within the meaning of the federal bankruptcy laws, or if bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings will be instituted by or against Customer; and (d) Customer's or any of its Users' use of the service in any manner that, in AccessHosting.com's reasonable discretion, could adversely affect AccessHosting.com's public image, goodwill, reputation or contractual relations (including its agreements for facilities or services), or could subject it to liability, or could threaten or put at risk AccessHosting.com's or its third-party provider's network(s).

**6. Suspension of service.** Upon and after the occurrence of any of the events set forth in Section 5.3 above, AccessHosting.com may, in its sole discretion, immediately or at any time thereafter, suspend the provision of all or any portion of the services to Customer, including, without limitation, by terminating Customer's passwords, account and/or access to or use of the services (including Customer Data (as defined below)). Access Hosting may impose such requirements and/or fees for reinstatement or reconnection of service as AccessHosting.com may determine in its discretion, including, without limitation, requiring a security deposit or that Customer pay with a credit card. Customer's obligation to pay all charges will remain in effect until termination of all services. Notwithstanding the termination of service, Customer will remain obligated (and, for credit card Customers, AccessHosting.com may charge Customer's credit card) for any outstanding invoices or amounts due and for all charges for services rendered but not billed prior to termination.

**7. Access to data.** AccessHosting.com will not permit Customer to access or remove any data (including, without limitation, any business, product, contact or other data inputted by Customer or any of its Users in the course of utilizing the service, "Customer Data") at any time unless and until all charges and other sums owing hereunder have been paid in full. In the event that Customer terminates service under Section 5.1 or Section 5.2 (and all charges and sums have been paid in full), AccessHosting.com will make available to Customer a file of the Customer Data within 30 days after Customer's written request. In the event that AccessHosting.com terminates service under Section 5.3, AccessHosting.com will have no obligation to maintain or forward any Customer Data. In any event, AccessHosting.com will have no obligation to retain any Customer Data for more than thirty (30) days after termination of service, and AccessHosting.com may delete any/all Customer Data anytime thereafter.

## **8. Technical service matters**

**8.1 Security and passwords.** AccessHosting.com will provide service security solely by providing Customer with access to the service through a combination of user names and passwords. Customer is responsible for any and all use of, and activities and transactions conducted through or that occur under, Customer's user accounts and/or passwords, whether or not authorized by Customer.

**8.2 Customer Assistance.** Implementation and training assistance and service support may be accessed by authorized Customer representatives through the AccessHosting.com website or by the telephone number posted on the website during the hours posted on the website. AccessHosting.com will use commercially reasonable efforts to respond promptly to Customer requests.

**8.3 Customer Data and data backup.** All Customer Data, whether posted by Customer, its Users or third parties through the use of Customer passwords, will (as between AccessHosting.com and Customer) be the sole property of Customer, unless specifically notified by AccessHosting.com in advance. Customer will have sole responsibility and liability for all aspects of the Customer Data, including, without limitation, its accuracy, quality, integrity, legality, reliability, appropriateness, privacy, security and copyright. AccessHosting.com will not be responsible or liable for any such matters (and Customer acknowledges that AccessHosting.com will exercise no control whatsoever over the Customer Data) or, without limitation, deletion, correction, destruction, damage, loss or failure to store any Customer Data.

**9. AccessHosting.com ownership.** These Terms of Service, and the provision/receipt of services, do not convey any rights of ownership to Customer in or related to any service, AccessHosting.com technology (including, without limitation, software, hardware, products, processes, algorithms, user interfaces, know-how, documentation, techniques, designs and other tangible or intangible technical material or information) or intellectual property rights of AccessHosting.com (all of which remain with AccessHosting.com). The AccessHosting.com name, the AccessHosting.com logo, and the product names associated with the

service are trademarks of AccessHosting.com or third parties, and no right or license is granted to Customer to use them. AccessHosting.com will have the right to fully exploit any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the service.

## 10. Customer responsibilities

- Customer will use the services solely for Customer's own internal business purposes, which may include the use of the service by Customer's employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by AccessHosting.com at Customer's request) ("Users") (provided that, no person or entity other than Customer will have rights under the Terms of Service or rights to the service from AccessHosting.com).
- Customer will operate its business and use, and will ensure that its Users use, the services and Access Hosting technology at all times in compliance with (i) the Terms of Service and Policies (and Customer will pass such Policies to its Users in its contracts with them), and (ii) all applicable local, state, federal and international laws, regulations, and conventions, including, without limitation, those related to data privacy, international communications, licensing requirements and the importation/exportation of technical or personal data (AccessHosting.com and its licensors make no representation that the Service is appropriate or available for use in other locations).
- Customer will not, and will ensure that its Users will not (and will not permit or assist any other person or entity to) (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make available to any third party the service or the audio or visual information, documents, software, products and services contained or made available to Customer in the course of using the service ("Content") (and Customer, for itself and its Users, grants to AccessHosting.com the non-exclusive, worldwide, right to use, copy, store, transmit and display Customer Data to the extent necessary to provide the service to Customer and/or its Users), (ii) modify, decompile, reverse engineer or make derivative works based upon AccessHosting.com technology or the Content, (iii) commercially exploit the service or the Content in any way other than as expressly permitted under these Terms of Service, (iv) create Internet "links" to the service or "frame" or "mirror" any Content contained in, or accessible from, the service on any other server, wireless or Internet-based device, (v) impersonate another AccessHosting.com user or provide false information to gain access to or use the Service, (vi) alter, remove or obscure, and will prevent third parties from altering, removing or obscuring, any trademark, copyright or other proprietary or restricted rights notices, or any associated disclaimers, that may appear in or through use of the Service or AccessHosting.com technology, or (vii) use any services (or engage in any activity on or through the AccessHosting.com website), in a manner which, in the reasonable discretion of AccessHosting.com, is not in accordance with the Policies or the generally accepted rules of Internet practices, conduct and etiquette, as reasonably interpreted by AccessHosting.com, or for any purpose other than that for which it is intended, or in violation of any law or regulation or in aid of any unlawful, inappropriate or improper act (including, without limitation, transmission of copyrighted material, material legally judged to be threatening or obscene or material protected by trade secret, trade mark or service mark) (AccessHosting.com reserves the right to monitor Customer's and its Users use of the services).
- Customer will (i) notify AccessHosting.com immediately of any lost, stolen or unauthorized use of any password or account or any other known or suspected breach of security, (ii) report to AccessHosting.com immediately, and use reasonable efforts to stop immediately, any copying or distribution of Content that is known or suspected by Customer or its Users, and (iii) provide all information reasonably required by AccessHosting.com for billing, contact and technical service purposes, including, without limitation, valid credit card information, and maintain the accuracy of such information by promptly notifying AccessHosting.com of any changes.
- Without limiting any other liability of Customer, Customer will be liable for the manner in which the services may be used by any of its Users or third parties through the use of Customer passwords and for any breach or violation of these Terms and Conditions (including any Policies) by any of its Users or third parties through the use of Customer passwords.

**11 A. Indemnification by Customer.** Customer will indemnify, defend and hold harmless AccessHosting.com and its directors, officers and employees from and against any and all losses, claims, obligations, liabilities, actions, suits, proceedings, demands, judgments, payments, costs and expenses (including court costs, amounts paid in settlement, judgments, and reasonable attorney fees and other expenses), and damages of any kind, nature or description whatsoever ("Damages") arising out of (i) any misrepresentation, breach of covenant or warranty or other breach or violation of these Terms of Service or any of the Policies by Customer and/or any of its Users or third parties through the use of Customer passwords, (ii) use of the services by Customer

and/or any of its Users or such third parties, and (iii) any other act or omission of Customer, its affiliates or any of their owners, officers, representatives, employees or Users or such third parties (including, without limitation, Damages relating to Customer Data, infringement and third party claims, Customer provided items and personal injury or damage to property).

**11 B. Indemnification by AccessHosting.com.** AccessHosting.com will indemnify, defend and hold Customer harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) of a third party (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer alleging that the use of the Service as permitted hereunder infringes any copyright, trademark, or misappropriation of a trade secret of a third party, provided that Customer (a) promptly gives AccessHosting.com notice of the claim, suit, action, or proceeding; (b) gives AccessHosting.com sole control of the defense and related settlement negotiations; and (c) provides AccessHosting.com with all reasonably available information and assistance necessary to perform AccessHosting.com's obligations under this paragraph.

Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the service in violation of this Agreement or applicable law, (b) use of the service after AccessHosting.com notifies Customer to discontinue use because of an infringement claim, or (c) modifications to the services made other than by AccessHosting.com. If the service is held to infringe, AccessHosting.com will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Service with a non-infringing Service; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term. The rights and remedies granted Customer under this Section 11 B state AccessHosting.com's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

## **12 No warranty by AccessHosting.com**

- AccessHosting.com DISCLAIMS ANY AND ALL WARRANTIES RELATING TO THE SERVICES, AccessHosting.com TECHNOLOGY AND INTELLECTUAL PROPERTY OR ANY OTHER MATTER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR TRADE PRACTICE.
- WITHOUT LIMITING THE FOREGOING, AccessHosting.com DOES NOT WARRANT THAT THE SERVICES WILL MEET ANY OF CUSTOMER'S EXPECTATIONS, WILL OPERATE IN ALL OF THE COMBINATIONS SELECTED BY CUSTOMER FOR ITS USE, OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.
- In the event that any claim, suit or proceeding is brought against Customer based on an allegation that an aspect of the service owned by AccessHosting.com (excluding, without limitation, products and services provided by third parties even if incorporated into the service and any claim arising out any act or omission of Customer, any User or third party) infringes any issued U.S. patent or copyright, AccessHosting.com may, at its sole option and expense, either: (i) procure for Customer the right to continue using the Service, (ii) replace an individual component of the service with a product or service, regardless of manufacturer, performing the same or similar function as the infringing aspect of the service, or modify the same so that it becomes non-infringing; or (iii) if neither of the foregoing alternatives is reasonably available, immediately terminate service (and AccessHosting.com's obligations and Customer's rights under these Terms of Service with regard to such service) and refund to Customer the charges paid by Customer for the service for the 3 month period immediately preceding the occurrence of the event on which the claim is based. **THIS WILL BE CUSTOMER'S ONLY REMEDY, AND AccessHosting.com'S ONLY OBLIGATION TO CUSTOMER, SHOULD A THIRD PARTY ALLEGE THAT THE SERVICE INFRINGES ANY ISSUED U.S. PATENT OR COPYRIGHT.**

**13 Customer's exclusive remedy.** EXCEPT FOR AccessHosting.com'S OBLIGATIONS UNDER SECTION 12, CUSTOMER'S SOLE REMEDY UNDER THESE TERMS OF SERVICE OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY ARISING OUT OF ANY ACT OR OMISSION OF AccessHosting.com) WILL BE TERMINATION OF THIS AGREEMENT.

## 14 Limitations of AccessHosting.com's liability

- 14.1 **No consequential damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, RELIANCE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, LOST REVENUE, LOST PROFITS, LOSS OF GOODWILL, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OR INACCURACY OF DATA, OR INTERRUPTION, INACCURACY OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORESEEABILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- 14.2 **Liability exclusions.** IN NO EVENT WILL AccessHosting.com BE LIABLE TO CUSTOMER, ITS USERS OR ANY OTHER PERSON OR ENTITY FOR DAMAGES ARISING IN ANY MANNER OUT OF (I) ANY USE OF THE SERVICES (OR ANY INABILITY TO USE, DOWNTIME, DATA INACCURACY OR LOSS, NONPERFORMANCE, OR FAILURE OF THE SERVICE) OR (II) ANY ACT OR OMISSION OF ANY PERSON OR ENTITY (INCLUDING, WITHOUT LIMITATION, UNAUTHORIZED ACCESS TO THE SERVICE OR CUSTOMER DATA).
- 14.3 **Liability maximum.** IN THE EVENT AccessHosting.com WILL BE LIABLE TO CUSTOMER NOTWITHSTANDING THE LIMITATIONS AND EXCLUSIVE REMEDIES HEREIN, AccessHosting.com'S LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BY STATUTE OR OTHERWISE) WILL NOT EXCEED, IN THE AGGREGATE, THE LAST 12 MONTHS OF THE MONTHLY RECURRING FEES ACTUALLY PAID TO AccessHosting.com.
- 14.4 **Survival.** THE PARTIES ACKNOWLEDGE THAT AccessHosting.com HAS SET ITS PRICES AND AGREED TO PROVIDE THE SERVICES IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THEY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THESE TERMS OF SERVICE WILL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY (AND THE SEVERABILITY OF SUCH PROVISIONS) AND WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF LIMITED REMEDY.

**15 Miscellaneous provisions.** These Terms of Service will be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to its principles of conflicts of laws. AccessHosting.com and Customer each hereby submits (and waives the right to contest on any grounds) to the exclusive, personal jurisdiction of either the Federal District Court for the District of Delaware, the Court of Common Pleas of New Castle County, Delaware or any municipal or local court located in such county for all claims, disputes or controversies involving such parties and relating to the services or these Terms of Service; provided, however, nothing herein will prevent AccessHosting.com from asserting a claim for indemnification or any other claim hereunder in connection with a third party action in the same jurisdiction where a third party action has been brought. No terms or information set forth on any document (other than a registration/order form accepted by AccessHosting.com) will add to or vary these Terms of Service. If any provision of these Terms of Service is held by a court of competent jurisdiction to be invalid or unenforceable, such provision(s) will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. Except for the payment of charges by Customer, neither party will be liable for any failure to perform, or any delay in performing its obligations under this Agreement to the extent such failure or delay is caused by or results from an event beyond such party's reasonable control, including, without limitation, acts of God, acts of war and terrorism, accidents, fires, floods, unusual weather conditions, strikes, labor disputes, governmental actions and telecommunications failures. No joint venture, partnership, employment, or agency relationship exists between Customer and AccessHosting.com as a result of the provision/receipt of the service or these Terms of Service. The failure of AccessHosting.com to enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. These Terms of Service (together with any applicable registration/order forms and the Policies) comprises the entire agreement between Customer and AccessHosting.com and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, regarding the subject matter hereof. Customer may not assign its rights to the service without AccessHosting.com's prior written consent (which shall not be unreasonably withheld). AccessHosting.com may give legal notice by means of a general notice on the service or electronic or other mail to Customer's address on record in AccessHosting.com account information. Sections 3 and 11 through and including 15 will survive the termination or expiration of service and/or these Terms of Service.

