

Hedgehog Hosting, Inc.

Terms of Service

This Agreement is entered into by and between **Hedgehog Hosting Inc.** (“Hedgehog,” “we” or “us”) and the person or entity purchasing or using our services (“Customer,” “you” or “your”) The terms and conditions under which Hedgehog agrees to provide different services (“Services”) to Customer as set forth in the included Statement of Work.

This agreement, together with all other agreements and policies incorporated by reference, including the Acceptable Use Policy (“AUP”), Privacy Policy, and any Statement of Work will be referred to as the “Terms of Service” or the “Master Service Agreement.” Hedgehog Hosting shall have the right to unilaterally modify or amend these Terms of Service at any time, in its sole discretion. We will always notify the Customer of any such changes, however, any use of the Service after the date such changes have been made constitute your conclusive agreement thereto. If you do not agree to the changes, you must immediately discontinue use of the Service.

1. Services

Throughout this Agreement, our products and services are referred to as “Service” or “Services.”

The pricing, features and term of the products and services you purchase from us are set out in one or more Statements of Work. The Effective Date is the date service is initiated. Hedgehog Hosting offers Customers the ability to upgrade the Services. At the time your upgrade order is processed, you are bound by the terms and conditions of that particular Service, for the Term of that Service.

We reserve the right to modify the Services, or the way in which we provide them to you. In the event that a Third Party Vendor ceases making a critical aspect of the Services available to us or the Services are or become prohibited by law or regulation.

The Services may contain software, hardware or services provided by Third Party Vendors. These Third Party Vendors may have reserved the right to make changes to the way they provide their products. These changes may materially affect the Services. You may not terminate this Agreement because of such changes.

Software: The Services may come pre-configured with software owned by a Third Party (the “Third Party Software”). If you represent to us that you already have a license to use the Third Party Software, we may require you to provide us with evidence of this license. You agree to comply with your license agreement while using the Third Party Software. If you do not have a license to use the Third Party Software, you agree to comply with the terms of any license that is required for you to use the Third Party Software.

Patching. Licensors of Third Party Software sometimes offer software updates, upgrades, bug fixes, or enhancements (“Patches”). Hedgehog Hosting reserves the right to determine in its sole judgment whether it will apply such Patches and to apply Patches in accordance with that determination. It is your sole and exclusive responsibility to determine whether installation of the Patches will damage your data or otherwise affect the operation of the Services as provided to, or used by, you. You must inform Hedgehog Hosting in writing of any request not to apply Patches, which Hedgehog Hosting may decline to honor if, in Hedgehog Hosting’s judgment, not applying the Patches poses any threat or risk to the security or reliability of Hedgehog Hosting’s overall platform. Given the inherent risk of applying Patches to live systems, Hedgehog Hosting disclaims liability for, and you agree to hold Hedgehog Hosting harmless from, any adverse consequences resulting from installation of, or any attempt to install, Patches.

IP Address. The Services may include an IP Address. This IP Address is leased to you by us and shall at all times remain the property of Hedgehog Hosting. We may change this IP Address at any time. The IP Address is not transferable. Upon the Termination of this Agreement, you must cease using the IP Address.

2. Term and Termination

Term. The term of this agreement shall begin on the Effective Date. Client shall receive an invoice for the setup fees defined in the agreed upon Statement of Work immediately following the Effective Date and all setup fees shall be due within one month of the date of the invoice. The “Service Commencement Date” shall be defined as the date on which Hedgehog has made Service available for Customer who will also will be notified of the Service Commencement Date.

The term of this agreement shall be set forth in the Statement of Work and following the conclusion of the Initial Term, this Agreement shall automatically renew for successive one-year periods unless either party gives written notice to the other of termination or non-renewal, for any reason, at least ninety (90) calendar days prior to the end of the then-current term or any renewal term.

Termination by Hedgehog. Hedgehog reserves the right (but shall have no obligation) to take additional action, up to and including termination, in the following limited circumstances: a) With or without notice, Hedgehog may modify or terminate any or all Services or restrict Customer’s use in whole or in part if, in Hedgehog’s sole judgment, use of the Services by Customer or its end users (i) presents a material security risk or will interfere materially with the proper continued operation of a data center or related services, or (ii) is subject to an order from a court or governmental entity stating that such use generally or for certain activities must stop. Where permitted under the relevant court or governmental order, Hedgehog will notify Customer of such order promptly so that Customer will have an opportunity to respond to the order. Hedgehog also will notify Customer promptly of any security risks identified under Section (i) above and any action taken by Hedgehog with respect to such security risks. b) Upon notice of not less than seven (7) calendar days and failure to cure within the notice period, Hedgehog may modify or terminate any or all Services or restrict Customer’s use in whole or in part if, in Hedgehog’s reasonable judgment, use of the Services by Customer or its end users (i) violates applicable laws or governmental regulations, including, without limitation, consumer protection, securities regulation, child pornography, obscenity, data privacy, data transfer and telecommunications laws; (ii) violates or infringes any intellectual property right of Hedgehog or a third party; (iii) violates export control regulations of the United States or other applicable countries; or (iv) otherwise violates Hedgehog’s attached Acceptable Use Policy (Exhibit D) or Hedgehog’s terms of service as outlined in Customer Responsibilities (Section 6). Notwithstanding anything to the contrary in this Agreement, Hedgehog reserves the right to take whatever steps are necessary to comply with any applicable law or regulation of the jurisdiction where Services are performed.

Termination by Either Party. Either party may terminate this Agreement at any time by giving written notice, effective immediately, upon the occurrence of either of the following events:

- **Material Breach.** The other party fails to discharge any material obligation or remedy any default under this Agreement for a period of more than thirty (30) calendar days after the aggrieved party has given such party written notice of such failure, but only if such failure has not been remedied at the time the aggrieved party gives such notice of termination; or

- **Outage.** In the event that Customer experiences an Outage event lasting longer than 2 calendar days or an aggregate series of outages lasting longer than 48 total hours within a 60 calendar day time frame, Customer shall have the right to terminate this Agreement.
- **Insolvency.** The other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to the bankruptcy laws.

Effect of Termination. Upon expiration of the Term or termination of this Agreement either by Hedgehog or by Customer, all rights granted to Customer under this Agreement terminate immediately. Customer shall deliver to Hedgehog written instructions for disposition of all data files in Hedgehog's possession within forty-five (45) calendar days of the notice of termination. Except in the case of material breach by Hedgehog, return or back up of data files shall be at Customer's expense. If written instructions are not received within forty-five (45) calendar days of the notice of termination, Hedgehog may destroy all files upon cessation of Services and completion of the Transition Period set forth in Section 2.5, if applicable. Any such return, back up or destruction is subject to any applicable law or governmental regulation. Customer remains liable to pay Hedgehog for the Services received through the date of termination of this Agreement and for any periods during which Customer is still receiving all or some portion of the Services. Upon termination of this Agreement or any applicable portion of the Services, Customer shall relinquish use of any Internet protocol addresses or address blocks assigned to it by Hedgehog in connection with the applicable Services.

Transition Period. Customer shall be entitled to a sixty-day period of continued service following any notice of termination in order to complete a transfer of service to Customer or to a new service provider selected by Customer ("Transition Period"); provided that Customer pays all past due fees and all fees for the Transition Period in advance and cures all grounds for termination under Section 2.2 or 2.3.

3. Charges and Terms of Payment

Fees. In consideration for the services to be rendered by Hedgehog, Customer agrees to pay the fees of Hedgehog as set forth in the fee schedule outlined in the Statement of Work.

Hedgehog reserves the right to increase its fees at any time upon thirty (30) calendar days' notice, but not more often than once per year.

Invoicing. Hedgehog shall invoice Customer monthly in advance in United States Dollars, unless otherwise expressly specified in the applicable Statement of Services. Charges shall be paid in United States Dollars within thirty (30) calendar days of receipt of the invoice. Hedgehog reserves the right to terminate hosting services if any previously issued and undisputed invoice remains past due only after giving fifteen (15) calendar days' notice, in writing, of the pending termination. In the event that Customer issues a purchase order to Hedgehog covering the Services under this Agreement, it is agreed that such purchase order is issued for purposes of authorization and Customer's internal use only. None of its terms and conditions shall modify the terms and conditions of this Agreement and/or related documentation, or affect either Party's responsibility to the other party as defined herein.

Finance Charge. A finance charge of one and one-half percent (1½%) per month or the highest amount allowed by law, whichever is less, will be assessed on all payments due on undisputed invoices that are more than thirty (30) calendar days past due. Any amounts outstanding for more than sixty (60) calendar days after the date of an undisputed invoice shall constitute a material breach on the part of the Customer.

Incidental Expenses. Appropriate pre-approved travel, administrative, and/or out-of-pocket expenses incurred by Hedgehog in connection with the Services performed shall be invoiced and reimbursed by Customer to Hedgehog

Taxes. The fees and expenses for services in Exhibit D do not include taxes. If Hedgehog is required to pay any federal, state, county or local taxes based on the Services provided under this Agreement, the taxes will be billed to and paid by Customer; this shall not apply to taxes based on Hedgehog's income.

4. Changes to Services

Customer shall have the right from time to time, by written notice, to propose changes in, or additions to, the Services to be supplied under this Agreement. Hedgehog agrees to comply to the extent feasible with such change notices, which shall become a part of the Agreement. The parties hereto acknowledge that such changes may cause an increase in the cost of or time required for performance. The parties shall agree in writing on any revised price and delivery schedule before the changes are initiated. Hedgehog may also propose changes in writing and may carry them out with the written consent of Customer.

5. Hedgehog Responsibilities

Hedgehog supports the server facilities and Internet access connection necessary to support Customer's World Wide Web content available to the public Internet. Hedgehog provides monitoring and management twenty-four (24) hours per day, seven (7) days per week in support of this service.

Hedgehog will provide technical services twenty-four (24) hours per day, seven (7) days per week. Technical services exist to ensure proper operation of the hardware, operating system software, and connectivity from Hedgehog facilities. Technical services are not in the position to offer consulting or advice on issues relating to Customer software. Customer may, however, request that such software be supported under the terms and conditions of Hedgehog's standard Software Services Agreement with Customer.

Where applicable, Hedgehog provides Customer with back up and storage of Customer's data, the basic description of which is defined in the Statement of Services attached hereto.

Hedgehog shall perform the services hereunder in accordance with every applicable law and regulation.

Additional services may be provided to the Customer and will be outlined in the Statement of Services.

6. Customer Responsibilities

Upon initial invoice by Hedgehog, Customer shall provide Hedgehog with the information to be stored on the server in a form specified by and acceptable to Hedgehog.

As between Customer and Hedgehog, Customer agrees it is solely responsible for and assumes all liability relating to the following:

- All aspects of Customer's business, including Customer's obligations to end users or other third parties and all business or financial results obtained by Customer from using the Services;
- All technology, equipment, content and data provided by or through Customer for use with the Services, including performance of software applications provided by Customer.

Customer is subject to replacement costs, including hourly installation and setup charges, in the case of failure of any hardware owned and/or provided by the customer;

- Outages or other malfunctions caused by hardware or software failure(s) where the equipment/software is manipulated by the customer without the knowledge or consent of Hedgehog will not constitute an outage per this agreement.
- Decisions about Customer's computer and communications systems needed to access the Services;
- Decisions made by Customer with respect to maintenance, remote assistance, or other actions taken by Hedgehog at the direction of Customer or according to event scripts or specifications provided by Customer;
- Compliance with all applicable laws and governmental regulations regarding Customer's business or use of the Services;
- Use of the Services by Customer's customers or end users;

7. Customer Constraints

Customer will not have access to the Hedgehog data center except as mutually agreed and only on an escorted basis.

8. Hedgehog Representations

Hedgehog represents and warrants that it has the power and authority to enter into this Agreement, and that it is an S-Corp organized and existing under the laws of the State of Virginia.

Hedgehog represents and warrants that it has the requisite personnel, skills, experience and technology to fulfill its responsibilities under this Agreement.

9. Customer Representations

Customer represents and warrants that the information to be hosted on the Service, and its use of the Service shall not 1) violate or infringe any proprietary rights of any third party, including any copyright, trademark, patent, trade secret, nor will it libel any person, or infringe the right of privacy or publicity, or 2) be used to knowingly make, create, solicit or initiate the transmission of any comment, request, suggestion, proposal, image or other communication which is obscene, lewd, lascivious, filthy, or indecent, or that may annoy, abuse, threaten, or harass another person, or 3) violate any federal, state or foreign law or regulation, including but not limited to the export of prohibited or restricted information to foreign nationals or nations as set forth in the regulations of the Department of State and the Department of Commerce.

Customer represents and warrants that Customer or any authorized user shall not use the Service to knowingly make, create, solicit or initiate the transmission of any comment, request, suggestion, proposal, image or other communication which is obscene, lewd, lascivious, filthy, or indecent, or that may annoy, abuse, threaten, or harass another person.

10. Ownership of Intellectual Property and Equipment

Unless otherwise expressly set forth in this Agreement, the parties do not, directly or by implication, by estoppel or otherwise, grant to each other any rights or licenses, and neither party shall have any ownership rights in any intellectual or tangible property of the other.

Hedgehog shall not obtain any right, title, and/or interest in the Content provided by Customer or its customers or end users and installed on, stored or processed through Hedgehog's hardware and software, and, as between Hedgehog and Customer, Customer shall retain title to and all rights and/or interest in such Content.

Unless otherwise expressly set forth in this Agreement, all equipment provided by Hedgehog in connection with this Agreement shall remain the property of Hedgehog.

Hedgehog shall retain title to and all rights in all intellectual property provided by Hedgehog, including, but not limited to, any know-how related to Hedgehog-provided Services or products such as hardware, software or any other server technology.

Customer understands that delivery of the Services may involve use of software owned by Hedgehog or third parties under license agreements with Hedgehog. Customer agrees to abide by the following terms governing use of such software:

- Customer shall not cause or permit reverse engineering, disassembly or de-compilation of any software provided by Hedgehog, or use such software outside the scope of this Agreement;
- Title to software provided by Hedgehog shall not pass to the Customer;
- Customer may use the Software only in object code form;
- Upon termination of this Agreement, or any applicable SLA, Customer shall cease using the software;
- Customer understands that in the event that Customer violates the intellectual property rights of any third party vendor of software, such software supplier shall have the right to enforce its intellectual property rights with respect to the software directly against the Customer;
- Customer may access the Software only in connection with use of the Services and Customer's business operations, and Software may not be re-licensed, rented, leased, or used for time sharing or service bureau users by Customer.

11. WARRANTY AND WARRANTY DISCLAIMERS

SERVICE LEVEL WARRANTIES; LIMITATIONS; SOLE REMEDIES. HEDGEHOG WARRANTS TO CUSTOMER THAT IT WILL PROVIDE THE SERVICES IN A MANNER WHICH IS CONSISTENT WITH THE SLA'S ATTACHED AS EXHIBIT B. CUSTOMER'S SOLE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OF SERVICES DUE TO OUTAGES, OR OTHER BREACH OF WARRANTY OR FAILURE BY HEDGEHOG TO MEET THE TERMS OF AN APPLICABLE SLA, SHALL BE THE CREDITS OR TERMINATION RIGHTS PROVIDED IN THE APPLICABLE SLA OR THIS AGREEMENT. HEDGEHOG AND ITS SERVICE PROVIDERS AND SUPPLIERS DISCLAIM ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS, OR BREACHES OF WARRANTY. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIABILITY OF HEDGEHOG AND ITS SERVICE PROVIDERS AND SUPPLIERS ARISING FROM ANY SUCH OUTAGE, INTERRUPTION, OR BREACH OF WARRANTY SHALL BE EXPRESSLY LIMITED AS SET FORTH IN THE ATTACHED SLA's.

GENERAL DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 11.1 AND AN APPLICABLE SLA, THE SERVICES ARE PROVIDED “AS IS” AND HEDGEHOG MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE SERVICES OR ANY RESULTS TO BE ACHIEVED THROUGH USE OF THE SERVICES; HEDGEHOG DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ALL IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

NO SECURITY WARRANTY. HEDGEHOG DOES NOT GUARANTEE THAT ITS PROCEDURES AND SERVICES WILL PREVENT LOSS, ALTERATIONS OR UNAUTHORIZED ACCESS TO CUSTOMER DATA HOSTED BY HEDGEHOG.

Disclaimer of Actions Caused by or Under the Control of Third Parties. HEDGEHOG DOES NOT AND CANNOT CONTROL THE PERFORMANCE OF ANY DATA, PRODUCTS, OR SERVICES CONTROLLED BY THIRD PARTIES. AT TIMES, ACTION OR INACTION BY THIRD PARTIES CAN IMPAIR OR DISRUPT HEDGEHOG’S SERVICES. HEDGEHOG MAKES NO REPRESENTATIONS AND EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING THE DATA, PRODUCTS, OR SERVICES CONTROLLED BY ANY THIRD PARTY, INCLUDING THE PROVIDERS OF TELECOMMUNICATIONS PRODUCTS OR SERVICES. SUCH DATA, PRODUCTS, AND SERVICES ARE NOT PROMISED TO BE FREE OF ERROR OR INTERRUPTION, AND HEDGEHOG EXPRESSLY DISCLAIMS ALL LIABILITIES ARISING FROM ANY SUCH ERROR, INTERRUPTION, OR OTHER FAILURE. CUSTOMER ACKNOWLEDGES THAT AN INTERRUPTION IN SERVICES DUE TO CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF HEDGEHOG, SUCH AS A FAILURE OF TELECOMMUNICATIONS SYSTEMS NOT CONTROLLED BY HEDGEHOG, SHALL NOT BE CONSIDERED A SERVICE OUTAGE FOR PURPOSES OF ANY WARRANTY PROVIDED IN AN APPLICABLE SLA.

12. Limitation of Liability; Remedies.

LIABILITY ARISING UNDER THIS AGREEMENT, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SHALL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES. NEITHER PARTY OR THEIR SUPPLIERS, INCLUDING SUPPLIERS OF TELECOMMUNICATIONS SERVICES, SHALL HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY, FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE. HEDGEHOG LICENSES CERTAIN SOFTWARE FROM THIRD PARTIES FOR USE WITH THE SERVICES. THE LIABILITY OF SUCH THIRD PARTY SUPPLIERS FOR DAMAGES, WHETHER DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL ARISING FROM USE OF THE SOFTWARE, SHALL BE DISCLAIMED AND LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE AGGREGATE LIABILITY OF HEDGEHOG AND ITS SUPPLIERS UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER TO HEDGEHOG HEREUNDER DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIMS.

SOLE REMEDIES; MATERIALITY. CUSTOMER AND HEDGEHOG AND ITS SUPPLIERS DISCLAIM ANY AND ALL LIABILITIES OR DAMAGES OTHER THAN THOSE EXPRESSLY PROVIDED IN THIS AGREEMENT OR AN ATTACHED SLA. CUSTOMER AND HEDGEHOG ACKNOWLEDGES AND AGREES THAT THE LIABILITY OF CUSTOMER, HEDGEHOG AND ITS SUPPLIERS ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SERVICES SHALL BE EXPRESSLY LIMITED TO THE LIABILITY AND DAMAGES PROVIDED HEREIN. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS REFERENCED IN THIS SECTION ARE MATERIAL TERMS TO THIS AGREEMENT.

13. Indemnification

Mutual Indemnifications. Each party agrees to indemnify and save harmless the other party from all claims, losses, liens, expenses, suits and attorneys' fees ("Liabilities") for injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such Liabilities arise from the active negligence or willful misconduct of the other party. The offending party shall, at its expense, defend any claim, legal proceeding or suit asserting a claim for Liabilities and shall pay all costs and attorneys' fees incurred by the other in connection therewith.

Hedgehog Indemnification. Hedgehog will defend or settle any suit or proceeding brought against Customer based upon a claim that the Services alone and not in combination with any other product or service constitutes an infringement of any patent, copyright or trade secret of any third party, and will pay all damages and costs (including any indirect or consequential damages awarded as a result of such proceeding) finally awarded against Customer up to the liability limits of this Agreement; provided that the Customer:

- Promptly notifies Hedgehog in writing of any such suit or proceeding;
- Provides Hedgehog with sole control over the defense or settlement of any such claim or action;
- Provides reasonable information and assistance in the defense or settlement of any such claim or action. Customer may participate in any such suit or proceeding through counsel of its choice at Customer's own expense; provided that the costs associated with Customer's counsel shall not be deemed damages or costs for purposes of Hedgehog's indemnity hereunder. Upon notice of not less than seven (7) calendar days, Hedgehog reserves the right (but shall have no obligation) to modify or terminate any or all Services or restrict Customer's use in whole or in part in the event of any suit or proceeding, or threatened suit or proceeding, which may be subject to an indemnity obligation under this Section.

Customer Indemnification. Customer shall indemnify, save harmless and fully defend Hedgehog from any and all damages and liability arising out of any action or claim brought against Hedgehog based on any allegation that any content of Customer or its customers or end users, including but not limited to data, text, multimedia images (e.g. graphics, audio and video files), software, applications, or other materials (collectively "Content"), or the manner in which Customer or its customers or end users make use of the Services;

- infringes a patent, trademark, copyright, trade secret, publicity, privacy or any right of a third party or constitutes misuse or misappropriation of a trade secret, under the laws of the United States or a foreign country ("Infringement") or
- violates any civil or criminal law or governmental regulations, occurring as a result of actions or omissions of Customer or its customers or end users; provided, however, that

Hedgehog shall give Customer prompt written notice of such action and all prior claims relating thereto; and Hedgehog shall fully cooperate with Customer in the defense and settlement of such action. Customer will pay all damages and costs finally awarded against Hedgehog (including any indirect or consequential damages awarded as a result of such proceeding); provided that Hedgehog:

- Promptly notifies Customer in writing of any such suit or proceeding,
- Provides Customer with sole control over the defense or settlement of any such action; and
- Provides reasonable information and assistance in the defense or settlement of any such action. Hedgehog may participate in any such suit or proceeding through counsel of its choice at Hedgehog's own expense; provided that the costs associated with Hedgehog's counsel shall not be deemed damages or costs for purposes of Customer's indemnity hereunder.

Notwithstanding the foregoing remedies, upon notice of not less than seven (7) calendar days, Hedgehog reserves the right (but shall have no obligation) to delete any Content installed on a Hedgehog server and to modify or terminate any or all Services or restrict Customer's use in whole or in part in the event of any suit or proceeding, or threatened suit or proceeding, which may be subject to an indemnity obligation under this Section.

14. Assignment

Neither party may, without the prior written consent of the other party, assign or transfer this Agreement or any obligation incurred hereunder, except that either party, upon written notice, may assign this Agreement to any affiliated entity, or to a successor entity upon the merger, reorganization, consolidation, or sale of all or substantially all of such party's assets. Any attempt to assign this Agreement in contravention of this Section shall be void and of no force and effect.

15. Excusable Delay

Hedgehog will not be liable for delays, damages or failures in performance due to causes beyond our reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, terrorists, fires, floods, riot or civil unrest, strikes or other labor-related disputes. In addition, Hedgehog Hosting's Service Level Commitment shall not apply if Hedgehog's failure to meet them results from any action or inactions of Customer or its representatives; or results from Customer's equipment, including all hardware, software and coding provided by the Customer.

16. Severability

If any of the terms or conditions in this Agreement is properly found to be invalid or unenforceable by a government body, the remaining terms or conditions of this Agreement shall not be affected by the finding and shall continue to apply.

17. Dispute Resolution; Applicable Law

In the event of a dispute or conflict in terms, the following documents are incorporated by reference and in the order of precedence as follows:

- **This Agreement**
- **Any Hedgehog proposals dated before this agreement**
- **Any Customer Request for Proposals preceding either**

With the exception of disputes involving breach of confidentiality, infringement of a party's intellectual property, or other types of irreparable harm for which injunctive relief through the

courts is sought by either party, all disputes arising under the terms of this Agreement or the grounds for termination thereof shall be resolved as follows: The senior management of both parties shall meet to attempt to resolve such disputes. If senior management cannot resolve the dispute, either party may make a written demand for formal dispute resolution and specify therein the scope of the dispute.

If the disagreements cannot be resolved by senior management within thirty (30) calendar days from the date any party made a written demand for resolution, a binding arbitration shall be held. Subject to the provisions of this Section, the rules of the arbitration shall be agreed upon by the parties prior to the arbitration and based upon the nature of the disagreement. To the extent that the Parties cannot agree on the rules of the arbitration, then the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect on the Effective Date of this Agreement, or, when either of the parties is not a U.S. entity, then the Commercial Arbitration Rules of the International Chamber of Commerce ("ICC") in effect on the Effective Date of this Agreement, and except as the applicable rules are modified by this Agreement, shall apply. The proceedings shall be held in the County of Loudoun, Virginia, U.S.A. under the auspices of the AAA or the International Chamber of Commerce, whichever is applicable. As a minimum set of rules in the arbitration, the Parties agree as follows:

- The arbitration shall be held by single arbitrator mutually acceptable to both parties. If the parties cannot agree on a single arbitrator within thirty (30) calendar days from the date written demand is made, each Party shall identify one independent individual who shall meet to appoint a single arbitrator. If an arbitrator still cannot be agreed upon within an additional thirty (30) calendar days, one shall be appointed by the AAA or ICC as applicable. The arbitrator shall be knowledgeable regarding the Internet hosting and data services industries.
- Prior to a final award, the parties shall equally bear the costs and fees of the arbitration and each party shall bear its own legal expenses. The Parties agree that a court reporter will record the arbitration proceedings and that the reporter's record will be the agreed transcript of the proceedings. Prior to a final award, the parties will share the expenses of this reporter.
- The arbitrator shall specify the basis for his/her decision, the basis for the damages award and a breakdown of the damages awarded, and the basis of any other remedy authorized under this Agreement. The decision of the arbitrator shall be considered as a final and binding resolution of the disagreement, shall not be subject to appeal and may be entered as a judgment in any court of competent jurisdiction located in Loudoun County, Virginia, U.S.A.
- Any arbitration proceeding hereunder shall be conducted on a confidential basis.
- The parties shall agree upon what, if any, discovery shall be permitted. If the parties cannot agree on the form of discovery within fifteen (15) calendar days after the appointment of the Arbitrator, then there shall be neither discovery nor the issuance of subpoenas. In no event, however, shall any such discovery take more than one month.
- The duty of the parties to arbitrate any dispute within the scope of this Section shall survive the expiration or termination of this Agreement for any reason. The parties specifically agree that any action must be brought, if at all, within two (2) years from the accrual of the cause of action.
- The discretion of the arbitrator to fashion remedies shall be limited as stated in this Agreement, and shall exclude any right to award a remedy based on implied rights under the Agreement.

Other Claims. Any action to enforce an arbitrator's decision, award, order, or judgment, or any claim which is beyond the scope of this arbitration provision, shall be submitted by any affected party to a court of competent jurisdiction located in Loudoun County, Virginia, U.S.A., and each party hereby agrees to jurisdiction and venue in the courts of the State of Virginia for all such disputes and litigation arising under or relating to this Agreement. Otherwise, neither Party shall sue the other where the basis of the suit is within the scope of this arbitration provision.

Governing Law. Any claim arising under or relating to this Agreement shall be governed by the internal substantive laws of the State of Virginia and the federal courts located in Virginia, without regard to principles of conflict of laws. Furthermore, the parties agree that the terms of The U.N. Convention on Contracts for the International Sale of Goods do not apply to this Agreement.

Attorneys' Fees. In the event of any dispute or arbitration hereunder, the prevailing party shall be entitled to recover its costs and disbursements incurred, together with reasonable attorneys' fees to be fixed by the arbitrator or court at trial or on appeal.

18. Publicity

Hedgehog may include Customer's name and logo in its Customer list, provided that Hedgehog maintain the confidentiality of all proprietary and Confidential Information. Either party may issue press releases regarding the existence, or general non-confidential business terms of this Agreement and subsequent task orders hereunder, subject to prior written approval of the other party, which approval shall not be unreasonably withheld.

19. Confidentiality and Nondisclosure

By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). It is the express intent of this Section that neither party disclose to any third party any information it learns concerning the business of the other party in the performance of Services hereunder.

A party's Confidential Information shall not include information that:

- Is or becomes a part of the public domain through no act or omission of the other party;
or
- was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party;
- is lawfully disclosed to the other party by a third party without restriction on disclosure;
or
- is independently developed by the other party.

The parties agree, both during the term of this Agreement and in perpetuity after termination of this Agreement, to hold each other's Confidential Information in confidence. The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than the implementation of this Agreement. Each party agrees to use the same degree of care that it uses to protect its own confidential information of a similar nature and value, but in no event less than a reasonable standard of care, to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement.

20. Privacy

Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties. Prior to initiation of Services under this Agreement and on an ongoing basis thereafter, Customer agrees to the Hedgehog Privacy Policy as outlined and to provide notice to Hedgehog of any privacy or data protection statutes, rules, or regulations which are or become applicable to Customer's business and which could be imposed on Hedgehog as a result of provision of Services under this Agreement.

Customer will ensure that the transfer and storage of any data about individuals collected by Customer ("personally identifiable data") and managed by a Hedgehog data center is legitimate under data protection regulations and will obtain consent from individuals for such transfer and storage under applicable regulations. Hedgehog will not transfer personally identifiable data to third parties. At the request of Customer, personally identifiable data may be transferred to other countries in order to achieve load balancing of content hosted by Hedgehog under this Agreement. Hedgehog's activities under its geographical load balancing Service do not involve the use, alteration or modification of personally identifiable data.

21. Notice

Any notice or other communication required or permitted hereunder shall be given in writing to the other party at the address first set forth above, or at such other address as shall be given by either party to the other in writing. Notices may be given by first class U.S. mail (postage pre-paid, registered and with return receipt requested), nationally recognized express courier, personally, or by hand. Notices shall be deemed to have been given on the date of delivery when delivered personally or, on receipt if delivered by express courier, by hand or by certified mail through the United States Postal Service.

22. Counterparts as Originals

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument. For purposes of this Agreement, facsimile and signatures under the Federal and Virginia E-Sign Acts shall be deemed counterparts.

22. Non-Waiver

Either party's failure at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided shall in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this Agreement. The exercise by either party of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the party from exercising thereafter of the same or any other rights, remedies or options.

23. Entire Agreement

This Agreement and all attachments hereto constitute the entire agreement between the parties and supersedes any prior or contemporaneous oral or written representations with regard to the subject matter hereof. This Agreement may not be modified except by a writing signed by both parties.

Revised: 4/30/18

Copyright © 2001-2018 Hedgehog Hosting, Inc. All Rights Reserved. Terms of Service