

acknowledge, agree and authorize Minerva Squad to continue billing your credit card and you remain responsible for any uncollected amounts.

User Agreement

This User Agreement ("Agreement") is an agreement between Minerva Squad ("Company") and the party set forth in the related order form ("Customer" or "You") incorporated herein by reference (together with any subsequent order forms submitted by Customer, the "Order Form"), and applies to the purchase of all services ordered by Customer on the Order Form (collectively, the "Services").

PLEASE READ THIS AGREEMENT CAREFULLY.

BY SIGNING UP FOR THE SERVICES CREATES A CONTRACT BETWEEN CUSTOMER AND COMPANY, CONSISTING OF THE ORDER, THE APPLICABLE SERVICE DESCRIPTION AND THIS USER AGREEMENT AND YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING COMPANY'S USAGE POLICY. YOUR USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

1. **Acceptable Use Policy.** Under this Agreement, Customer shall comply with Company's then current Acceptable Use Policy ("AUP"), as amended, modified or updated from time to time by Company, which currently can be viewed under the Legal Details section of this web site, and which is incorporated in this Agreement by reference. Customer hereby acknowledges that it has reviewed the AUP and that the terms of the AUP are incorporated herein by reference. In the event of any inconsistencies between this Agreement and the AUP, the terms of the AUP shall govern. Company does not intend to systematically monitor the content that is submitted to, stored on or distributed or disseminated by Customer via the Service (the "Customer Content"). Customer Content includes content of Customer's customers and/or users of Customer's website. Accordingly, under this Agreement, You will be responsible for Your customers' content and activities on Your website. Notwithstanding anything to the contrary contained in this Agreement, Company may immediately take corrective action, including removal of all or a portion of the Customer Content, disconnection or discontinuance of any and all Services, or termination of this Agreement in the event of notice of possible violation by Customer of the AUP. In the event Company takes corrective action due to a violation of the AUP, Company shall not refund to Customer any fees paid in advance of such corrective action. Customer hereby agrees that Company shall have no liability to Customer or any of Customer's customers due to any corrective action that Company may take (including, without limitation, disconnection of Services).

2. Term; Termination; Cancellation Policy.

- a. The initial term of this Agreement shall be as set forth in the Order Form (the "Initial Term"). The Initial Term shall begin upon commencement of the Services to Customer. After the Initial Term, this Agreement shall automatically renew. **ADDITIONALLY AFTER THE INITIAL TERM, YOU ACKNOWLEDGE, AGREE AND AUTHORIZE COMPANY TO AUTOMATICALLY BILL AND/OR CHARGE ON YOUR CREDIT CARD FOR SUCCESSIVE TERMS OF EQUAL LENGTH AS THE INITIAL TERM, UNLESS TERMINATED OR CANCELLED BY EITHER PARTY AS PROVIDED IN THIS SECTION.** The Initial Term and all successive renewal periods shall be referred to, collectively, as the "Term".
- i. If the payment method you use with us, such as a credit card, reaches its expiration date and you do not edit your payment method information or cancel, you

- b. This Agreement may be terminated
- i. by either party by giving the other party thirty (30) days prior written notice subject to a minimum €50.00 charge as an early cancellation fee payable by Customer,
 - ii. by Company in the event of nonpayment by Customer,
 - iii. by Company, at any time, without notice, if, in Company's sole and absolute discretion and/or judgment, Customer is in violation of any term or condition of the this Agreement and related agreements, AUP, or Customer's use of the Services disrupts or, in Company's sole and absolute discretion and/or judgment, could disrupt, Company's business operations and/or
 - iv. By Company as provided herein.
- c. If You cancel this Agreement, upon proper notice to Company, prior to the end of the Initial Term or any Term thereafter,
- i. You shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation;
 - ii. Company may (but is not obligated to) refund to You all pre-paid fees for basic hosting services for the full months remaining after effectiveness of cancellation (i.e., no partial month fees shall be refunded), less any setup fees and any discount applied for prepayment, provided that, You are not in breach of any terms and conditions of this AUP, User Agreement, Spamming Policy or Domain Policy; and/or
 - iii. You shall be obligated to pay one hundred percent (100%) of all charges for all Services for each month remaining in the Term (other than basic hosting fees as provided in (ii) above). Any cancellation request shall be effective thirty (30) days after receipt by Company, unless a later date is specified in such request.
- d. Company may terminate this Agreement, without penalty,
- i. if the Services are prohibited by applicable law, or become impractical or unfeasible for any technical, legal or regulatory reason, by giving Customer as much prior notice as reasonably practicable; or
 - ii. Immediately, if Company determines that Customer's use of the Services, the Web site or the Customer Content violates any Company term or condition, including this AUP, User Agreement, Spamming Policy, or Domain Policy. If Company cancels this Agreement prior to the end of the Term for Your breach of this Agreement and related agreements, including the AUP, User Agreement, Spamming Policy, or Domain Policy or Customer's use of the Services disrupts our network, Company shall not refund to You any fees paid in advance of such cancellation and You shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation; further, You shall be obligated to pay 100% of all charges for all Services for each month remaining in the Term and Company shall have the right to charge You an administrative fee of a minimum of €50.00.
- e. Upon termination of this Agreement for any cause or reason whatsoever, neither party shall have any further rights or obligations under this Agreement, except as expressly set forth herein. The provisions of Sections 2(e), 3, 4, 10, 11, 13, 15 and 16 of this Agreement shall survive the expiration or

termination of this Agreement for any cause or reason whatsoever, and, notwithstanding the expiration or termination of this Agreement, the parties shall each remain liable to the other for any indebtedness or other liability theretofore arising under this Agreement. Termination of this Agreement and retention of pre-paid fees and charges shall be in addition to, and not be in lieu of, any other legal or equitable rights or remedies to which Company may be entitled.

3. Customer's Responsibilities.

- a. Customer is solely responsible for the quality, performance and all other aspects of the Customer Content and the goods or services provided through the Customer Web site.
- b. Customer will cooperate fully with Company in connection with Company's performance of the Services. Customer must provide any equipment or software that may be necessary for Customer to use the Services. Delays in Customer's performance of its obligations under this Agreement will extend the time for Company's performance of its obligations that depend on Customer's performance on a day for day basis. Customer will notify Company of any change in Customer's mailing address, telephone, electronic mail or other contact information.
- c. Customer assumes full responsibility for providing end users with any required disclosure or explanation of the various features of the Customer Web site and any goods or services described therein, as well as any rules, terms or conditions of use.
- d. Because the Services permit Customer to electronically transmit or upload content directly to the Customer Web site, Customer shall be fully responsible for uploading all content to the Customer Web site and supplementing, modifying and updating the Customer Web site, including all back-ups. Customer is also responsible for ensuring that the Customer Content and all aspects of the Customer Web site are compatible with the hardware and software used by Company to provide the Services, as the same may be changed by Company from time to time. Specifications for the hardware and software used by Company to provide the Services will be available on Company's Web site. Customer shall periodically access Company's Web site to determine if Company has made any changes thereto. Company shall not be responsible for any damages to the Customer Content, the Customer Web site or other damages or any malfunctions or service interruptions caused by any failure of the Customer Content or any aspect of the Customer Web site to be compatible with the hardware and software used by Company to provide the Services.
- e. Customer is solely responsible for making back-up copies of the Customer Web site and Customer Content.

4. Customer's Representations and Warranties.

- a. Customer hereby represents and warrants to Company, and agrees that during the Initial Term and any Term thereafter Customer will ensure that:
 - i. Customer is the owner or valid licensee of the Customer Content and each element thereof, and Customer has secured all necessary licenses, consents, permissions, waivers and releases for the use of the Customer Content and each element thereof, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by Company to pay any fees, residuals, guild payments or other compensation of any kind to any Person;

- ii. Customer's use, publication and display of the Customer Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any person, including, without limitation, any contractual, statutory or common law right or any "moral right" or similar right however denominated;

- iii. Customer will comply with all applicable laws, rules and regulations regarding the Customer Content and the Customer Web site and will use the Customer Web site only for lawful purposes; and

- iv. Customer has used its best efforts to ensure that the Customer Content is and will at all times remain free of all computer viruses, worms, Trojan horses and other malicious code.

- b. Customer shall be solely responsible for the development, operation and maintenance of Customer's web site, online store and electronic commerce activities, for all products and services offered by Customer or appearing online and for all contents and materials appearing online or on Customer's products, including, without limitation

- i. the accuracy and appropriateness of the Customer Content and content and material appearing in its store or on its products,

- ii. ensuring that the Customer Content and content and materials appearing in its store or on its products do not violate or infringe upon the rights of any person, and

- iii. Ensuring that the Customer Content and the content and materials appearing in its store or on its products are not defamatory or otherwise illegal. Customer shall be solely responsible for accepting, processing and filling customer orders and for handling customer inquiries or complaints. Customer shall be solely responsible for the payment or satisfaction of any and all taxes associated with its web site and online store.

- c. Customer grants Company the right to reproduce, copy, use and distribute all and any portion of the Customer Content to the extent needed to provide and operate the Services.

- d. In addition to transactions entered into by Customer on Your behalf, Customer also agrees to be bound by the terms of this Agreement for transactions entered into on Customer's behalf by anyone acting as Customer's agent, and transactions entered into by anyone who uses Customer's account, whether or not the transactions were on Customer's behalf.

5. License to Company. Customer hereby grants to Company a non-exclusive, royalty-free, worldwide right and license during the Initial Term and any Term thereafter to do the following to the extent necessary in the performance of Services under the Order:

- a. digitize, convert, install, upload, select, order, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, publicly display, publicly perform and hyperlink the Customer Content; and

- b. Make archival or back-up copies of the Customer Content and the Customer Web site.

- c. Except for the rights expressly granted above, Company is not acquiring any right, title or interest in or to the Customer Content, all of which shall remain solely with Customer.

CANCELLED BY EITHER PARTY AS PROVIDED IN SECTION 2.

- d. Company, in its sole discretion, reserves the right (i) to deny, cancel, suspend, transfer or alter, modify, correct, amend, change, program, or take any other corrective action to protect the integrity and stability of the Services (including altering, modifying, correcting, amending, changing, programming, or taking any other corrective action regarding any malicious code, software or related abusive activity, Customer Content and/or web site(s)), and/or (ii) to comply with any applicable laws, government rules, or requirements, requests of law enforcement, or to avoid any liability, civil or criminal. Customer further agrees that Company shall not be liable to Customer for any loss or damages that may result from such conduct.
6. Billing and Payment.
- a. Customer will pay to Company the service fees for the Services in the manner set forth in the Order Form.
- b. Company may increase the Service Fees (i) in the manner permitted in the service description and (ii) at any time on or after expiration of the Initial Term.
- c. The Service Fees do not include any applicable sales, use, revenue, excise or other taxes imposed by any taxing authority with respect to the Services or any software provided hereunder (excluding any tax on Company's net income). All such taxes will be added to Company's invoices for the fees as separate charges to be paid by Customer. All fees are fully earned when due and non-refundable when paid.
- d. Unless otherwise specified, all fees and related charges shall be due and payable within thirty (30) days after the date of the invoice. If any invoice is not paid within seven (7) days after the date of the invoice, Company may charge Customer a late fee of €15.00 for; in addition any amounts payable to Company not paid when due will bear interest at the rate of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less.
- e. If Company collects any payment due at law or through an attorney at law or under advice therefrom or through a collection agency, or if Company prevails in any action to which the Customer and Company are parties, Customer will pay all costs of collection, arbitration and litigation, including, without limitation, all court costs and Company's reasonable attorneys' fees. I
- f. If any check is returned for insufficient funds Company may impose a minimum processing charge of €25.00.
- g. In the event that any amount due to Company remains unpaid seven (7) days after such payment is due, Company, in its sole discretion, may immediately terminate this Agreement, and/or withhold or suspend Services.
- h. There may be a minimum €50.00 charge to reinstate accounts that have been suspended or terminated.
- i. Wire transfers will be assessed a minimum €35.00 charge.
- j. There may be a minimum €35.00 charge to for all credit card chargebacks.
- k. Customer acknowledges and agrees that Company may pre-charge Customer's fees for the Services to its credit card supplied by Customer during registration for the Initial Term.
1. **YOU ACKNOWLEDGE, AGREE AND AUTHORIZE COMPANY TO AUTOMATICALLY BILL AND/OR CHARGE ON YOUR CREDIT CARD FOR SUCCESSIVE TERMS OF EQUAL LENGTH AS THE INITIAL TERM, UNLESS TERMINATED OR**
7. Company as Reseller or Licensor. Company is acting only as a reseller or licensor of the hardware, software and equipment used in connection with the products and/or Services that were or are manufactured or provided by a third party ("Non-Company Product"). Company shall not be responsible for any changes in the Services that cause the Non-Company Product to become obsolete, require modification or alteration, or otherwise affect the performance of the Services. Any malfunction or manufacturer's defects of Non-Company Product either sold, licensed or provided by Company to Customer or purchased directly by Customer used in connection with the Services will not be deemed a breach of Company's obligations under this Agreement. Any rights or remedies Customer may have regarding the ownership, licensing, performance or compliance of Non-Company Product are limited to those rights extended to Customer by the manufacturer of such Non-Company Product. Customer is entitled to use any Non-Company Product supplied by Company only in connection with Customer's permitted use of the Services. Customer shall use its best efforts to protect and keep confidential all intellectual property provided by Company to Customer through any Non-Company Product and shall make no attempt to copy, alter, reverse engineer, or tamper with such intellectual property or to use it other than in connection with the Services. Customer shall not resell, transfer, export or re-export any Non-Company Product, or any technical data derived therefrom, in violation of any applicable United States or foreign law.
8. Internet Protocol (IP) Address Ownership. If Company assigns Customer an Internet Protocol ("IP") address for Customer's use, the right to use that IP address shall belong only to Company, and Customer shall have no right to use that IP address except as permitted by Company in its sole and absolute discretion in connection with the Services, during the term of this Agreement. Company shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to Customer by Company, and Company reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion.
9. Caching. Customer expressly
- a. Grants to Company a license to cache the entirety of the Customer Content and Customer's web site, including content supplied by third parties, hosted by Company under this Agreement and
- b. Agrees that such caching is not an infringement of any of Customer's intellectual property rights or any third party's intellectual property rights.
10. CPU Usage. Customer agrees that Customer shall not use excessive amounts of CPU processing on any of Company's servers. The maximum number of files is 50,000 per account. Any violation of this policy may result in corrective action by Company, including assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken in Company's sole and absolute discretion. If Company takes any corrective action under this section, Customer shall not be entitled to a refund of any fees paid in advance prior to such action.
11. Bandwidth and Disk Usage. Company shall provide Customer with a large volume of bandwidth, disk space and other resources, such as email and/or file-transfer-protocol ("FTP") accounts. The Services are intended for normal use only. Any activity that results in excessive usage inconsistent with normal usage patterns is strictly prohibited. Customer agrees that such bandwidth and disk usage shall not exceed the amounts set by Company for the Services (the "Agreed Usage"). These allotments are optimized

and dedicated towards serving the Content and Customer's electronic mail services related solely to Customer's web hosting account(s) with Company. Customer shall not use any bandwidth and/or disk usage for materials other than the Customer's Web site, Customer Content and/or Customer's electronic mail services. For example, Customer may not use bandwidth or disk usage as offsite storage area for electronic files or as a provisioning service for third party electronic mail or FTP hosts. Company will monitor Customer's bandwidth and disk usage. Company, in its sole discretion, shall have the right to take any corrective action if Customer's bandwidth or disk usage exceeds the Agreed Usage or other improper storage or usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, removal or deletion of Customer's Web site, Customer Content, Customer's electronic mail services and/or other materials or termination of this Agreement, which actions may be taken in Company's sole and absolute discretion. If Company takes any such corrective action under this section, Customer shall not be entitled to a refund or credit of any fees paid prior to such action. Customer will comply with all applicable laws, rules and regulations regarding Customer's Web site, Customer Content and/or Customer's electronic mail services and will each, including bandwidth, disk space and other resources only for lawful purposes. Customer may not utilize: the Services to copy material from third parties (including text, graphics, music, videos or other copyrightable material) without proper authorization; the Services to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party; the Services to traffic in illegal drugs, illegal gambling, obscene materials or other any products or services that are prohibited under applicable law; the Services to export encryption software to points outside the United States in violation of applicable export control laws; the Services to forge or misrepresent message headers, whether in whole or in part, to mask the originator of the message. If Company learns or discovers that Customer is violating any law related to Customer's Web site, Customer Content and/or Customer's electronic mail services, use of bandwidth, disk usage or Agreed Usage, Company may be obligated to inform the necessary law enforcement and/or any related agency(ies) of such conduct and may provide such agency(ies) with information related to Customer, Customer's Web site, Customer Content and/or Customer's electronic mail.

12. Parked Domain Services. In addition to the applicable terms and conditions contained herein:

- a. If Customer signs up to register and park a domain name with Company, Customer agrees to pay Company the annual fee a set forth on our web site (the "Parked Page Services"). Customer's annual billing date will be determined based on the month Customer establishes the Parked Page Services with Company. Payments are non-refundable. If for any reason Company is unable to charge Customer's payment method for the full amount owed Company for the service provided, or if Company is charged a penalty for any fee it previously charged to Your payment method, Customer agrees that Company may pursue all available remedies in order to obtain payment. Customer agrees that among the remedies Company may pursue in order to effect payment, shall include but will not be limited to, immediate cancellation without notice to Customer of Customer's service. Company reserves the right to charge a reasonable service fee for administrative tasks outside the scope of its regular services. These include, but are not limited to, customer service issues that cannot be handled over email but require personal service, and disputes that require legal services. These charges will be billed to the payment method we have on file for Customer.
- b. Customer agrees to be responsible for notifying Company should Customer desire to terminate use of any of the Parked Page Services, including, but not limited to, those purchased.

Notification of Customer's intent to terminate must be provided to Company no earlier than thirty (30) days prior to Customer's billing date but no later than ten (10) days prior to the billing date. In the absence of notification from Customer, Company will automatically continue the Parked Page Services indefinitely and will charge Customer's payment method that is on file with Company, at Company's then current rates. It is Customer's responsibility to keep their payment method information current, which includes the expiration date if using a credit card. In the event Customer terminates the Parked Page Services, moving their web site off of the Company hosting servers is Customer's responsibility. Company will not transfer or FTP such web site to another provider. Any change by Customer of their name-server is not deemed cancellation of the Parked Page Services.

- c. Company will provide Customer with the Parked Page Services as long as Customer abides by the terms and conditions set forth herein and in each of Company's policies and procedures.
- d. By using any of the Parked Pages Services, Customer agrees that Company may point the domain name or DNS to one of Company's or Company's affiliates web pages, and that they may place advertising on Customer's web page and that Company specifically reserves this right. Customer shall have no right to any compensation and shall not be entitled and shall have no right to receive any funds related to the monetization of Customer's Parked Pages.
- e. Customer agrees to indemnify and hold harmless Company for any complications arising out of use of the Parked Page Services, including but not limited to, actions Company chooses to take to remedy Customer's improper or illegal use of a web site hosted by Company. Customer agrees it is not be entitled to a refund of any fees paid to Company if, for any reason, Company takes corrective action with respect to any improper or illegal use of the Parked Page Services.
- f. If a dispute arises as a result of one or more of Customer's Parked Pages, Customer will indemnify, defend and hold Company harmless for damages arising out of such dispute. Customer also agrees that if Company is notified that a complaint has been filed with a governmental, administrative or judicial body, regarding a web site hosted by Company, that Company, in its sole discretion, may take whatever action Company deems necessary regarding further modification, assignment of and/or control of the web site to comply with the actions or requirements of the governmental, administrative or judicial body until such time as the dispute is settled.

13. Property Rights.

- a. Company hereby grants to Customer a limited, non-exclusive, non-transferable, royalty-free license, exercisable solely during the term of this Agreement, to use Company technology, products and services solely for the purpose of accessing and using the Services. Customer may not use Company's technology for any purpose other than accessing and using the Services. Except for the rights expressly granted above, this Agreement does not transfer from Company to Customer any Company technology, and all rights, titles and interests in and to any Company technology shall remain solely with Company. Customer shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the Company.
- b. Company owns all right, title and interest in and to the Services and Company's trade names, trademarks, service marks, inventions, copyrights, trade secrets, patents, know-how and other intellectual property rights relating to the

design, function, marketing, promotion, sale and provision of the Services and the related hardware, software and systems ("Marks"). Noting in this Agreement constitutes a license to Customer to use or resell the Marks.

14. Disclaimer of Warranty. Customer agrees to use all Services and any information obtained through or from Company, at Customer's own risk. Customer acknowledges and agrees that Company exercises no control over, and accepts no responsibility for, the content of the information passing through Company's host computers, network hubs and points of presence or the Internet. **THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN AS IS, AS AVAILABLE BASIS. NONE OF COMPANY, ITS PARENT, SUBSIDIARY OR AFFILIATED CORPORATIONS, OR ANY OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, AGENTS, ATTORNEYS, SUPPLIERS, THIRD-PARTY INFORMATION PROVIDERS, MERCHANTS, LICENSORS OR THE LIKE (EACH, AN "COMPANY PERSON") MAKE ANY WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, FOR THE SERVICES OR ANY EQUIPMENT COMPANY PROVIDES. NO COMPANY PERSON MAKES ANY WARRANTIES THAT THE SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE; NOR DO ANY OF THEM MAKE ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICES OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THE SERVICES. COMPANY IS NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM CUSTOMER OR STORED BY CUSTOMER OR ANY OF CUSTOMER'S CUSTOMERS VIA THE SERVICES PROVIDED BY COMPANY. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY ANY COMPANY PERSON, WILL CREATE A WARRANTY; NOR MAY YOU RELY ON ANY SUCH INFORMATION OR ADVICE.** The terms of this section shall survive any termination of this Agreement.

15. Limited Warranty.

- a. Company represents and warrants to Customer that the Services will be performed (a) in a manner consistent with industry standards reasonably applicable to the performance thereof; (b) at least at the same level of service as provided by Company generally to its other customers for the same services; and (c) in compliance in all material respects with the applicable Service Descriptions. Customer will be deemed to have accepted such Services unless Customer notifies Company, in writing, within thirty (30) days after performance of any Services of any breach of the foregoing warranties. Customer's sole and exclusive remedy, and Company's sole obligation, for breach of the foregoing warranties shall be for Company, at its option, to re-perform the defective Services at no cost to Customer, or, in the event of interruptions to the Services caused by a breach of the foregoing warranties, issue Customer a credit in an amount equal to the current monthly service fees pro rated by the number of hours in which the Services have been interrupted. Company may provision the Services from any of its data centers and may from time to time re-provision the Services from different data centers.
- b. The foregoing warranties shall not apply to performance issues or defects in the Services (a) caused by factors outside of Company's reasonable control; (b) that resulted from any

actions or inactions of Customer or any third parties; or (c) that resulted from Customer's equipment or any third-party equipment not within the sole control of Company. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND COMPANY HEREBY EXPRESSLY DISCLAIMS THE SAME. WITHOUT LIMITING THE FOREGOING, ANY THIRD-PARTY SOFTWARE PROVIDED TO CUSTOMER HEREUNDER IS PROVIDED "AS IS" WITHOUT ANY CONDITION OR WARRANTY WHATSOEVER. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.**

16. Limitation of Liability.

- a. **IN NO EVENT WILL COMPANY'S LIABILITY IN CONNECTION WITH THE SERVICES, ANY SOFTWARE PROVIDED HEREUNDER OR ANY ORDER, WHETHER CAUSED BY FAILURE TO DELIVER, NON-PERFORMANCE, DEFECTS, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE AGGREGATE SERVICE FEES PAID TO COMPANY BY CUSTOMER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.**
- b. **COMPANY CANNOT GUARANTEE CONTINUOUS SERVICE, SERVICE AT ANY PARTICULAR TIME, INTEGRITY OF DATA, INFORMATION OR CONTENT STORED OR TRANSMITTED VIA THE INTERNET. COMPANY WILL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ANY CORRUPTION, ERASURE, THEFT, DESTRUCTION, ALTERATION OR INADVERTENT DISCLOSURE OF, DATA, INFORMATION OR CONTENT TRANSMITTED, RECEIVED OR STORED ON ITS SYSTEM.**
- c. **EXCEPT AS EXPRESSLY PROVIDED BELOW, NEITHER PARTY SHALL BE LIABLE IN ANY WAY TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY LOST PROFITS OR REVENUES, LOSS OF USE, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LICENSES OR SERVICES OR SIMILAR ECONOMIC LOSS, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR NOT, UNDER ANY WARRANTY OR OTHER RIGHT HEREUNDER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY ORDER, OR FOR ANY CLAIM AGAINST THE OTHER PARTY BY A THIRD PARTY, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES.**
- d. The limitations contained in this Section apply to all causes of action in the aggregate, whether based in contract, tort or any other legal theory (including strict liability), other than claims based on fraud or willful misconduct. The limitations contained in Section 15(c) shall not apply to Customer's indemnification obligations.

- e. Notwithstanding anything to the contrary in this Agreement, Company's maximum liability under this Agreement for all damages, losses, costs and causes of actions from any and all claims (whether in contract, tort, including negligence, quasi-contract, statutory or otherwise) shall not exceed the actual dollar amount paid by Customer for the Services which gave rise to such damages, losses and causes of actions during the 12-month period prior to the date the damage or loss occurred or the cause of action arose.
- f. Customer understands, acknowledges and agrees that if Company takes any corrective action under this Agreement because of an action of Customer or one of its customers or a reseller, that corrective action may adversely affect other customers of Customer or other reseller customers, and Customer agrees that Company shall have no liability to Customer, any of its customers or any Reseller Customer due to such corrective action by Company.
- g. This limitation of liability reflects an informed, voluntary allocation between the parties of the risks (known and unknown) that may exist in connection with this Agreement. The terms of this section shall survive any termination of this Agreement.
17. **Indemnification.** Customer agrees to indemnify, defend and hold harmless Company and its parent, subsidiary and affiliated companies, and each of their respective officers, directors, employees, shareholders, attorneys and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to Customer's use of the Services, (ii) any violation by Customer of the AUP, (iii) any breach of any representation, warranty or covenant of Customer contained in this Agreement or (iv) any acts or omissions of Customer. The terms of this section shall survive any termination of this Agreement.
18. **Miscellaneous.**
- a. **Independent Contractor.** Company and Customer are independent contractors and nothing contained in this Agreement places Company and Customer in the relationship of principal and agent, master and servant, partners or joint venturers. Neither party has, expressly or by implication, or may represent itself as having, any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.
- b. **Governing Law; Jurisdiction.** Any controversy or claim arising out of or relating to this Agreement, the formation of this Agreement or the breach of this Agreement, including any claim based upon arising from an alleged tort, shall be governed by the substantive laws of the State of California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. **ANY SUIT, ACTION OR PROCEEDING CONCERNING THIS AGREEMENT MUST BE BROUGHT IN A STATE OR FEDERAL COURT LOCATED IN LOS ANGELES COUNTY, CALIFORNIA, AND EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS THEREFROM) IN ANY SUCH SUIT, ACTION OR PROCEEDING AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE**
- LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT ANY SUCH SUIT, ACTION OR PROCEEDING WHICH IS BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**
- c. **Headings.** The headings herein are for convenience only and are not part of this Agreement.
- d. **Entire Agreement; Amendments.** This Agreement, including documents incorporated herein by reference, supersedes all prior discussions, negotiations and agreements between the parties with respect to the subject matter hereof, and this Agreement constitutes the sole and entire agreement between the parties with respect to the matters covered hereby. In case of a conflict between this Agreement and any purchase order, service order, work order, confirmation, correspondence or other communication of Customer or Company, the terms and conditions of this Agreement shall control. No additional terms or conditions relating to the subject matter of this Agreement shall be effective unless approved in writing by any authorized representative of Customer and Company. This Agreement may not be modified or amended except by another agreement in writing executed by the parties hereto; provided, however, that these Terms of Service may be modified from time to time by Company in its sole discretion, which modifications will be effective upon posting to Company's web site.
- e. **Severability.** All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.
- f. **Notices.** All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers set forth below the parties' signatures. Either party may change its address or facsimile number for purposes of this Agreement by notice in writing to the other party as provided herein. Company may give written notice to Customer via electronic mail to the Customer's electronic mail address as maintained in Company's billing records.
- g. **Waiver.** No failure or delay by any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.
- h. **Assignment; Successors.** Customer may not assign or transfer this Agreement or any of its rights or obligations hereunder, without the prior written consent of Company. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect.

whatsoever. Company may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without the consent of Customer. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

- i. Limitation of Actions. No action, regardless of form, arising by reason of or in connection with this Agreement may be brought by either party more than two years after the cause of action has arisen.
- j. Counterparts. If this Agreement is signed manually, it may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If this Agreement is signed electronically, Company's records of such execution shall be presumed accurate unless proven otherwise.
- k. Force Majeure. Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.
- l. No Third-Party Beneficiaries. Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended, nor shall anything herein be construed to confer any rights, legal or equitable, in any Person other than the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, Customer acknowledges and agrees that Microsoft, and any supplier of third-party supplier that is identified as a third-party beneficiary in the Service Description, is an intended third-party beneficiary of the provisions set forth in this Agreement as they relate specifically to its products or services and shall have the right to enforce directly the terms and conditions of this Agreement with respect to its products or services against Customer as if it were a party to this Agreement.
- m. Government Regulations. Customer may not export, re-export, transfer or make available, whether directly or indirectly, any regulated item or information to anyone outside the United States in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the United States government and any country or organization of nations within whose jurisdiction Customer operates or does business.
- n. Marketing. Customer agrees that during the term of this Agreement Company may publicly refer to Customer, orally and in writing, as a customer of Company. Any other public reference to Customer by Company requires the written consent of Customer.