

SECURE HOSTING LTD.

TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS AFFECT YOUR RIGHTS AND LIMIT OUR LIABILITY. PLEASE READ THEM CAREFULLY.

1. GENERAL

- 1.1. The following terms and conditions ("Terms and Conditions") apply to the use of the services (the "Services") to be provided by Secure Hosting Communications Ltd. ("Secure Hosting") to the customer (the "Customer") as defined in the Business Customer Agreement (the "Customer Agreement") entered into by Secure Hosting with the Customer to which these Terms and Conditions are incorporated therein and form a part. The Customer Agreement also includes (i) any attachments as noted in the Customer Agreement, (ii) any enrolment and other order forms executed by Secure Hosting and the Customer in connection with the Customer Agreement, and (iii) any modification made by Secure Hosting as permitted hereunder. If there is a conflict or inconsistency between these Terms and Conditions and another term of the Customer Agreement, the other term of the Customer Agreement will apply provided that section 5.3 will apply in all circumstances unless specifically amended.
- 1.2. Services are provided solely on the basis of, and are subject to, service, facility and equipment availability. Secure Hosting is not required to provide universal service and will not provide a service to any person or company who, in the opinion of Secure Hosting, would compromise the technical, financial or operational integrity of Secure Hosting or its facilities or network.
- 1.3. Secure Hosting is authorised to act as the Customer's agent in ordering access connection facilities or other services as required in connection with the provision of the Services ordered by the Customer.

2. INSTALLATION AND SERVICE

- 2.1. Installation The Customer will make all necessary preparations required, as set out in the Customer Agreement, to permit installation, maintenance and operation of the Services and will provide Secure Hosting, and its suppliers of communication services and equipment, reasonable access to the Customer's equipment, to perform any work required to provide the Services. The Customer will have available, at least five days prior to the scheduled installation date, all equipment which the Customer is required, as set out in the Customer Agreement, to provide. Impairment of the Services due to any equipment or software on the Customer's equipment not provided by Secure Hosting will not relieve the Customer of its obligation to pay for the Services.
- 2.2. Installation Delay or Cancellation If the Customer cancels or delays a request for a Service after installation work has started, but before the Service is fully installed, the Customer will be liable for any and all installation charges, removal costs, site restoration costs and any applicable termination fee. Payment of these charges, costs and fees will be due on receipt of invoice.

- 2.3. Secure Hosting Racks All racks provided by Secure Hosting are the property of Secure Hosting and may not be moved, changed or modified without written approval of Secure Hosting. The Customer may not change any locks on racks within the facility or modify, improve or enhance security of racks and cabinets without prior written approval of Secure Hosting. As a rule, for safety, security and fire issues, Secure Hosting requires access to all racks, cabinets and enclosed spaces within Secure Hosting facilities.

3. SERVICE AVAILABILITY GUARANTEE

- 3.1. 99.9% Availability Service is guaranteed to be available 99.9% of the time in a given calendar month (the "Availability Guarantee"). If the Customer reports one or more outages of a Service, and total downtime results in less than 99.9% availability during the month, Secure Hosting will credit the Customer account 25% of the monthly fee paid for the applicable Service in that month. The Service interruption begins to be measured when the Customer calls Secure Hosting Network Operations Centre to report that the Service is unavailable.
- 3.2. Definition of Unavailable
- 3.2.1. For the purposes of determining "availability" in section 3.1, the following rules apply. Web site hosting is considered to be unavailable if the Secure Hosting-hosted web site cannot be accessed (i.e. viewed) from the Internet due to problems on Secure Hosting's network or servers. E-mail is unavailable if the Customer is not able to send or receive e-mail due to problems on Secure Hosting's network or servers. Internet access service is available as long as the Customer site (i.e. workstation or server) can access the Internet. A Service is not considered unavailable if that Service is merely degraded or slow unless service performance falls below the minimum committed rate as set out in any Service Level Agreement. Data services interruption means the inability to complete network connections point to point.
- 3.2.2. It may be necessary to temporarily suspend service for technical reasons or to maintain the network, equipment or facilities, the notice of which will be provided to the Customer at least one day in advance. Such suspension of service will be considered an interruption of service if it falls outside of the regularly scheduled network maintenance window as defined in Section 3.2.3 below. In such cases, prior notification by the Customer is not required to be considered a service outage and will be counted towards the Availability Guarantee.
- 3.2.3. Secure Hosting has designated the hours between 4AM - 7AM (Eastern Time) every Sunday as its scheduled network maintenance window and reserves the right to perform any such maintenance without notice during that period.
- 3.3. Exclusions from Availability Guarantee The Availability Guarantee does not extend to interruptions or unavailability as a result of the following:
- (a) scheduled maintenance required to Secure Hosting's systems and network between the hours of 4AM and 7AM (Eastern Time) on Sunday mornings;
 - (b) Customer equipment or network failures, including, but not limited to, software configuration errors and Customer-owned hardware failures;
 - (c) problems outside of the Secure Hosting network including problems beyond Secure Hosting's interconnection at the Internet Network Access Points; or
 - (d) Force Majeure (as defined below).
- 3.4. Suspension of Guarantee The Availability Guarantee does not apply if, and for as long

as, the Customer is in default under the Customer Agreement.

4. SECURE HOSTING'S RIGHT TO VARY SERVICES

- 4.1. Service Migration Secure Hosting reserves the right to update, upgrade or otherwise migrate the Customer's existing Services, products or technologies to services, products or technologies which are of equivalent or better quality at no cost or additional charge to the Customer, including the migration of services from third party service providers to Secure Hosting or alternative third party service suppliers. The Customer will be responsible for any costs necessary to upgrade the Customer provided hardware, software and other technologies to access the updated, upgraded or migrated service. The sole recourse for the Customer if it is not willing to accept any such update, upgrade or migration is the right to terminate the Customer Agreement on 30 days' prior written notice received by Secure Hosting within 15 calendar days of the Customer's receipt of written notice of Secure Hosting's intent to update, upgrade or migrate service. Secure Hosting will waive the right to all Term Contract cancellation penalties for any termination invoked under the terms of this section 4.1.
- 4.2. Exceeding Contractual Limits The Customer's storage requirement and bandwidth utilization for fixed limit Services must remain within the parameters associated with the Customer's account as set out in the Customer Agreement. Secure Hosting may monitor and enforce the parameters associated with the Customer's account. The Customer acknowledges that, for Internet service, enforcement may include a refusal to store incoming mail and/or not permit further download traffic on the Customer's website.
- 4.3. Investigations Secure Hosting has no obligation to monitor content on the Services. Secure Hosting has the right to monitor content and service levels electronically from time to time and to disclose any information necessary to: satisfy any law, regulation or other governmental request or to assist Secure Hosting in the pursuit of any claim against the Customer; operate the Services properly; or protect Secure Hosting and its customers and service providers. Secure Hosting reserves the right to either refuse to post or transmit, or to remove any information or materials, in whole or in part, that Secure Hosting determines are unacceptable, undesirable or in violation of the Customer Agreement or these Terms and Conditions.

5. SECURE HOSTING'S RIGHT TO TERMINATE SERVICE

- 5.1. Termination by Secure Hosting In addition to Secure Hosting's right to terminate or suspend Services as provided elsewhere in these Terms and Conditions, Secure Hosting may at any time discontinue any or all Services, cancel a request for Services and terminate its obligations under the Customer Agreement without incurring liability upon:
 - (a) for any material violation by the Customer of any of the provisions of the Customer Agreement and/or these Terms and Conditions;
 - (b) if the Customer becomes bankrupt, insolvent, takes any proceeding seeking relief from creditors, ceases or threatens to cease to carry on business, becomes subject to any execution, seizure or restraint in respect of equipment supplied by Secure Hosting, fails to provide security to Secure Hosting when reasonably requested or otherwise does not meet Secure Hosting's credit requirements;
 - (c) in the event of any intentional or *de facto* transfer or assignment of or use of Services supplied by Secure Hosting which Secure Hosting, acting reasonably, determines to be an improper use;
 - (d) where any applicable law prohibits Secure Hosting from furnishing such Services; or
 - (e) where any leases, licences, easements, rights of way, permits or regulatory

authorizations or approvals required by Secure Hosting to provide the Services in accordance with the Customer Agreement cannot be obtained or renewed without commercially unreasonable expense to Secure Hosting, or are terminated or revoked for any reason.

In connection with termination pursuant to paragraphs (a), (b) and (c), the Customer will be responsible for all costs incurred by Secure Hosting in connection with removing the Services and related equipment and for the termination charges that would have been payable had the Customer terminated the Customer Agreement pursuant to section 6.14 hereof. Secure Hosting shall have a lien on all Customer equipment or property on Secure Hosting premises and if payment is not made in ninety (90) days of notice of termination, Secure Hosting can sell the Customer's equipment to recover any amounts due and any amounts remaining, after payment in full, will be forwarded to the Customer.

- 5.2. Effect of Termination A termination of the Customer Agreement for any reason will not affect or prejudice any rights or obligations which have accrued or arisen under the Customer Agreement prior to the time of termination which rights and obligations will survive the termination of the Customer Agreement. In particular, and without limitation of the above, the Customer will remain liable to Secure Hosting for the payment of all sums of money payable to Secure Hosting under the Customer Agreement up to the date of termination and for the performance of all the obligations that require Secure Hosting to do or perform certain matters after the termination of the Customer Agreement.
 - 5.3. Remedies Despite any other term of the Customer Agreement or these Terms and Conditions, if Secure Hosting terminates the Customer Agreement as a result of a breach by the Customer of any of the terms of the Customer Agreement or these Terms and Conditions or if the Customer terminates the Customer Agreement pursuant to section 6.14 after it has breached the Customer Agreement or these Terms and Conditions, Secure Hosting is entitled, in addition to its right to terminate the Customer Agreement, any additional remedies available to it at law for the losses it has suffered as a result of the breach.
 - 5.4. Determination of Intent Occasionally, unintentional abuse is misclassified as intentional. If the Customer believes its activity has been misclassified, it may appeal to Secure Hosting's senior management. The Customer's sole remedy and Secure Hosting's sole liability in respect of any misclassification of activity will be credit for service fees for the duration the misclassification applied to the Customer's account.
 - 5.5. Customer Assets Located in Secure Hosting Facilities Secure Hosting is entitled to deny the Customer removal of any Customer equipment from a Secure Hosting facility if there are outstanding invoices with the Customer totalling more than ten dollars. If on termination the Customer does not settle all outstanding invoices within 90 days Secure Hosting may seize and sell off Customer assets located in Secure Hosting facilities. Should the sale and divestiture of Customer assets exceed all amounts owing to Secure Hosting, Secure Hosting will send a cheque in excess amount to the Customers last known mailing address within 30 days of the sale.
6. PRICING AND PAYMENT
- 6.1. Rates and Charges The rates and charges for the Services will be as set out in the Customer Agreement as amended from time to time in accordance with these Terms and Conditions. Secure Hosting is not required to refund or credit charges for unused Services except as noted on the Customer Agreement.
 - 6.2. Changing Plans The Customer may request, subject to any restrictions set out in the Customer Agreement with respect to a contract for a specified term (a "**Term**

Contract”), which term is set out in the Customer Agreement, a change to a different Secure Hosting pricing plan by submitting a written change request to Secure Hosting. Any such pricing plan changes take effect at the start of the next billing cycle following Secure Hosting's confirmed receipt and acceptance of the change request.

- 6.3. Responsibility for Charges Incurred The Customer will pay all fees and other charges incurred in respect of the Customer's account, including charges for any purchases made through the Services and any surcharges incurred while using any supplemental services or features of the Services for which a surcharge is applicable. Unless otherwise expressly noted, all taxes are extra. The Customer will pay all applicable taxes, and any access charges relating to the use of the Services, whether such charges are billed by the service provider to Secure Hosting or directly to the Customer.
- 6.4. Payment Terms Secure Hosting will render invoices monthly, in advance and each invoice is due within ten (10) days of the beginning of each month. The Customer may pay its Secure Hosting account pursuant to the payment options set out in Schedule A. No interest will be charged if the invoice is paid within 30 days of the invoice date. Any amounts remaining outstanding on or after thirty days after invoice date are overdue and will be charged interest at the rate of 1.5% per month compounded monthly (19.56% per annum) from the date of the invoice. Acceptance of late or partial payments will not waive any of Secure Hosting's rights to collect the full amount of charges due for the Services, plus interest.
- 6.5. Invoice Disputes Notice of any disputes regarding an invoice must be made by the Customer in writing and received by Secure Hosting within 60 days from the invoice date. No claim may be made by the Customer in respect of an invoice after such period.
- 6.6. Insufficient Funds The Customer will reimburse Secure Hosting for all costs associated with collecting delinquent or dishonoured payments in addition to a \$50 administration fee.
- 6.7. Deposit Secure Hosting will require a deposit from the Customer to establish or maintain the Services. The said deposit cannot be used by the Customer to pay any invoice or delay any payment. Secure Hosting may require an increase to the deposit at any time to reflect estimated monthly charges based on actual usage or Secure Hosting's assessment of the Customer's ability to pay. Secure Hosting may, without notice, apply any deposit towards payment of charges due. Ninety days following any termination, any remaining deposit or other credit balance in excess of \$10 will be returned by cheque to the Customer's last known mailing address.
- 6.8. Suspension or Cancellation for Non-Payment Secure Hosting may suspend or cancel a Customer's Services if the Customer has any invoice outstanding 30 days or more. Any Customer having any account that is unpaid for three consecutive billing cycles (as described below) may, at Secure Hosting's option, have its files archived or purged and its services cancelled or suspended. While suspended, the Customer's account will continue to accrue monthly or periodic charges for Services subject to the Customer Agreement. Upon payment of all accrued charges a service reconnection charge equal to the then current set-up fee will be assessed to remove an account from suspension.
- 6.9. Billing Cycle The Secure Hosting billing cycle begins on the first day of each month unless noted otherwise in the Customer Agreement. Charges for a new account are pro-rated based on the number of days remaining after the commencement of Services in the initial month of service at a daily rate equal to the monthly charge divided by 30 days. Charges in a month in which an account is terminated are not pro-rated and will not be refunded except as noted in the Customer Agreement. All Bandwidth Services will be billed in arrears at the end of the monthly billing cycle.

- 6.10. Other Charges All installation and equipment charges will be billed at the time that Service is committed for. Installation and equipment charges and registration and set-up fees are non-refundable except as section 6.10 applies.
- 6.11. Account Information The Customer is entitled upon request to receive copies of its historical account or billing information for the previous 12 billing cycles subject to payment of an administration fee.
- 6.12. Period of Service With respect to Services to be billed on a periodic basis, the initial term of the Customer Agreement will commence on the date the first of those Services commences and will automatically renew for successive periods equal in length to the initial term set out in the Customer Agreement until terminated as set forth below. The Customer may terminate the Customer Agreement and the use of all or any of the Services at the end of the then current term by providing at least 30 days' notice prior to the end of that term. The following cancellation charges, where applicable, will be due and payable immediately:
 - (a) for month-to-month service, the monthly charge for the month in which that Service will terminate;
 - (b) for service under a Term Contract, charges for the remainder of the term or in the case of a renewal period until contract termination.

7. CUSTOMER RESPONSIBILITIES

- 7.1. Authority Secure Hosting will only recognize and act on the instructions of those individuals whose names appear on the Customer Agreement or any list of contact names submitted by the Customer in writing, as the person(s) authorized to accept, modify or terminate the Services or the Customer Agreement. Only those individuals identified to Secure Hosting by the Customer and whose photo identification is on file with Secure Hosting may access the Customers equipment located in Secure Hosting facilities.
- 7.2. Software Licence Agreement The Customer will comply with the terms of the Software Licence Agreement attached to the Customer Agreement and any software licence accompanying software provided by Secure Hosting. In the event another software licence accompanies specific software provided by Secure Hosting, that licence shall apply to the specific software it accompanies.
- 7.3. No Proprietary Right The Customer obtains no proprietary right or interest in, or any right to use of, any specific type of facility, service, equipment, address, number, process or code associated with any Service except as expressly noted in the Customer Agreement. Title to all equipment and software provided by Secure Hosting is reserved to Secure Hosting and does not pass to the Customer. The Customer's only right is to use the equipment and software on the terms provided in the Customer Agreement and/or the Software Licences.
- 7.4. Customer Information For purposes of identification, billing and marketing, the Customer will provide Secure Hosting from time to time with accurate, complete, and updated information including Customer's legal name, address, telephone number(s), e-mail addresses and applicable payment data. The Customer will notify Secure Hosting within 30 days of any such changes to this information.
- 7.5. Content on Web Site The Customer is solely responsible for all content available on or through the Customer's web site(s) and will protect Secure Hosting against any losses it suffers (including legal fees) as a result of the content of the Customer's site(s) or those belonging to its customers.

- 7.6. Domain Name The Customer is responsible for ensuring that use of any domain name selected by it does not conflict with the rights of any other person. Secure Hosting cannot guarantee, set aside or in any other way reserve domain names on behalf of the Customer. Secure Hosting will use reasonable commercial efforts to obtain a requested domain name but will in no way whatsoever be held responsible for nor be liable to the Customer for an inability to secure or otherwise obtain a requested domain name. Secure Hosting will not be liable to the Customer or any other person arising from actual or threatened termination of the right to use a domain name.
- 7.7. Internet Protocol Address The Customer acknowledges that Secure Hosting is the owner of the Internet Protocol ("IP") static address(s) assigned to a domain name(s) and web site(s) hosted in Secure Hosting facilities, which Secure Hosting will supply. Secure Hosting reserves the right to change the addresses at any time upon 30 days' notice to the Customer. Upon termination, all IP addresses assigned by Secure Hosting to the Customer will revert to Secure Hosting and the Customer will have no further right to use such addresses. The Customer will co-operate with Secure Hosting in effecting any such change or transfer.
- 7.8. Compliance with Law The Customer will use the Services only as permitted by applicable laws, regulations, rules, decisions and orders of applicable governmental and regulatory authorities. The Customer will comply with the rules and regulations applicable to any network that is accessed through the Services. The Customer will not use the Services to carry out any activity or solicit performance of any activity that is prohibited by law or regulation or facilitates or immediately threatens the violation of any law (including intellectual property law or regulation) or violates the Customer Agreement, these Terms and Conditions or Secure Hosting's Acceptable Use Policy ("Policy"), which Policy is incorporated herein and is subject to change from time to time, as posted on the Secure Hosting website from time to time. In particular and without limiting the foregoing, the Customer will not:
- (a) knowingly interfere with the lawful use by others of any Service;
 - (b) modify, reverse engineer or, decompile, disassemble, or create derivative works based on software provided by Secure Hosting or any Secure Hosting service provider or supplier unless expressly permitted under the terms of the Software Licence Agreement in Schedule B or other applicable software licence;
 - (c) use the Services to deliberately release computer viruses or other unauthorized or unwanted computer programs or data onto the Internet;
 - (d) use the Secure Hosting name, logo or trademark in any promotional materials, contracts, bills, or similar names or documents, or in association with the Customer's products or services without the express written authorization of Secure Hosting;
 - (e) in the case of Internet Service, violate generally accepted Internet use guidelines, commonly known as "**Netiquette**", to the extent the principles do not conflict with the provisions of the Customer Agreement;
 - (f) use the Services to invade the privacy of third parties, impersonate Secure Hosting personnel or other Secure Hosting customers or tend to damage the name or reputation of Secure Hosting, its affiliates or agents;
 - (g) engage in any activity in connection with the Services that is abusive, profane, libelous, slanderous, threatening or otherwise harassing, including posting material in any newsgroup that is off-topic according to any public statement of the newsgroup;
 - (h) solicit Secure Hosting customers to patronize competing services;

- (i) use the Services to violate or tamper with the security of any computer, equipment or program belonging to Secure Hosting or any other service provider participating with or connected to Secure Hosting Services;
 - (j) engage in Internet Service bulk mailing of advertising or information, "**spamming**", or any other e-mail abuse;
 - (k) use the Services to engage in the practice of hacking or any other unauthorized attempt to access or otherwise gain entry to the filter systems or network of Secure Hosting, its customers, service providers or any other third party;
 - (l) use any process, program, or tool via the Services for the purposes of guessing, deriving or in any other way attempting to obtain the passwords of Secure Hosting, its service providers or customers of Secure Hosting or any other service provider;
 - (m) cause or intentionally damage Secure Hosting systems or other networks through Secure Hosting systems.
- 7.9. Liability for Improper Use Violation of the terms of Section 7.8 by the Customer may result in any of the following:
- (i) immediate termination or suspension of Services to the Customer by Secure Hosting without prior notice,
 - (ii) civil or criminal liability,
 - (iii) monetary penalties,
 - (iv) costs incurred to enforce the Customer's compliance with section 7.12, and/or
 - (v) clean-up costs to be charged to the Customer by Secure Hosting at a minimum of \$200/hour.
- 7.11. Indemnification The Customer will indemnify and save Secure Hosting harmless from and against all loss, liability or damages of any type and expense, including reasonable legal fees, arising from any and all claims by any third party, including users and service providers, in connection with the improper use of the Services (and related equipment) by the Customer or the Customer's failure to comply with its obligations under the Customer Agreement. This indemnity will survive termination of the Customer Agreement.
- 7.12. System Requirements The Customer will be responsible for maintaining all its hardware, software and other Customer-supplied property in proper working order and at a level sufficient to meet the Secure Hosting system requirements as notified to the Customer by Secure Hosting from time to time. The Customer acknowledges that the Secure Hosting system requirements will change over time and such changes may require the Customer to purchase additional equipment, software or other property or services. All Customer equipment entering Secure Hosting facilities must be inspected and accepted by Secure Hosting before it may be connected to Secure Hosting's power, IP or telecommunications carriers.
- 7.13. Equipment Secure Hosting is acting only as a reseller or licensor of any hardware, software and equipment (collectively, the "Equipment") offered in the Customer Agreement that was manufactured by a third party. Secure Hosting shall not be responsible for any changes in Services(s) that cause Equipment to become obsolete, require modification or alteration, or otherwise affect the performance of the Services. Any malfunction or manufacturer's defects of Equipment either sold, licensed or provided by Secure Hosting to the Customer or purchased directly by the Customer used in connection with the Service(s) will not be deemed a breach of Secure Hosting's

obligations under this Agreement. Any rights or remedies the Customer may have regarding the ownership, licensing, performance or compliance of Equipment are limited to those rights extended to the Customer by the manufacturer of such Equipment. The Customer is entitled to use any Equipment supplied by Secure Hosting only in connection with the permitted use of the Services. The Customer shall use best efforts to protect and keep confidential all intellectual property provided by Secure Hosting to the Customer through any Equipment 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. The Customer shall not resell, transfer, export or re-export any Equipment, or any technical data derived there from, in violation of any applicable laws of the Commonwealth of the Bahamas or foreign law.

In the event that Secure Hosting provides Equipment to the Customer free of charge, upon the termination of this Customer Agreement for any reason, the Customer may: (a) purchase the Equipment at the rate of 75% of its original retail value; or (b) return, at your costs, the Equipment to Secure Hosting in the same condition as furnished to you, excepting normal wear and tear.

If the Customer does not purchase or return the Equipment within ten (10) business days of the termination of the Customer Agreement, Secure Hosting will invoice the Customer, and the Customer agrees to pay for the Equipment at the rate of 75% of its original retail value.

8. ACCESS

- 8.1. Access to Repair For the purpose of restoring the Services in the event of an interruption, the Customer acknowledges that Secure Hosting may require access to the Customer's equipment. The Customer will provide such access immediately upon Secure Hosting's request at no charge to Secure Hosting. If the Customer fails to do so, the Customer will have no remedy or entitlement to credit for any continuing or subsequent failure of Secure Hosting to meet any service guarantee.
- 8.2. Other Access Secure Hosting may, upon reasonable notice (determined in the circumstances, but not less than 48 hours), make such inspections, tests, installations, repairs and adjustments as it deems necessary for the operation of Secure Hosting's network, or the Customer's or Secure Hosting's network equipment or connecting facilities and for verifying the Customer's compliance with this Customer Agreement. The Customer will make available to Secure Hosting, without charge, such facilities, equipment and records (including by providing access to the Customer's premises) as are reasonably necessary in the circumstances.
- 8.3. Identification Required Upon request, Customer's agents or employees will show valid identification prior to entering the Secure Hosting's premises.

9. ENUREMENT, ASSIGNMENT

- 9.1. The Customer Agreement is binding upon and will enure to the benefit of the parties and their respective successors, administrators, personal representatives and permitted assigns.
- 9.2. Neither the Customer Agreement nor any right thereunder may be assigned, transferred or otherwise disposed of in whole or in part by the Customer without the prior written consent of Secure Hosting which consent will not be unreasonably withheld. Without restricting the generality of the foregoing, the Customer will be deemed to have assigned, transferred or disposed of the Customer Agreement upon a change in the direct or indirect control of the Customer, including a sale of all or a substantial part of its

assets. In such a case, the Customer must notify Secure Hosting and provide it with the relevant "new customer" information including, but not limited to, the name and address of the new controlling party.

- 9.3. Secure Hosting is entitled at any time without notice to the Customer (a) to assign the Customer Agreement to any of its affiliates or (b) to a third party in connection with the sale of all or substantially all of the assets of Secure Hosting.

10. CONFIDENTIAL INFORMATION

- 10.1. The Customer warrants that all information transmitted by it to Secure Hosting is true and correct. The Customer warrants that it has been authorized to transmit such information to Secure Hosting and that Secure Hosting is authorized to receive and hold such information. Secure Hosting warrants that the information will only be used for the purposes of providing the Services, managing the Customer file and administration of functions such as, but not limited to, credit assessment, billing and collection. Furthermore, the information contained in the Secure Hosting Customer file is restricted to the internal use of Secure Hosting employees except where expressly noted in the Customer Agreement or as required to ensure the efficient supply of services to the Customer, to interact with a service provider interconnecting with Secure Hosting facilities on behalf of the Customer, to support accounts receivable collection agents employed by Secure Hosting or as required by any legal representative duly authorized to obtain access to any such confidential information.
- 10.2. Secure Hosting and the Customer may disclose to each other confidential information, including but not limited to, pricing, invoices, billing or marketing materials either directly, by verbal or written communication, or indirectly, by permitting employees of one party to observe various operations or processes conducted by the other. Any information, including invoicing information, that reveals or otherwise permits the calculation of Secure Hosting pricing is confidential. The sharing of confidential information is made on the basis of the confidential relationship established between the parties and each party agrees to take reasonable precautions to protect from disclosure confidential information of the other party which it has received.
- 10.3. This Section 10 will survive termination of this Agreement.

11. LIMIT ON WARRANTIES AND LIABILITY OF SECURE HOSTING

- 11.1. It is hereby understood and agreed that the amounts payable to Secure Hosting under the Customer Agreement are based upon the value of the Services, products and equipment as well as the scope of liability set forth in the Customer Agreement and these Terms and Conditions and are unrelated to the value of the property or business of the Customer or third parties (such as, but not limited to, customers of the Customer).
- 11.2. Except as specifically provided in the Customer Agreement, Secure Hosting makes no express or implied warranty or condition, whether of merchantability, fitness for a particular purpose, or otherwise, with respect to any service, product or equipment provided to the Customer by Secure Hosting. Neither Secure Hosting nor any of its underlying service providers, information providers, licensors, employees, or agents warrants that service will be uninterrupted or error free; nor does Secure Hosting or any of its underlying service providers, information providers, licensors, employees, or agents make any warranty as to the results to be obtained from use of their services, products or equipment. EXCEPT AS SPECIFICALLY PROVIDED IN THE CUSTOMER AGREEMENT, ALL SERVICES, PRODUCTS AND EQUIPMENT ARE DISTRIBUTED PURSUANT TO THE CUSTOMER AGREEMENT ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WHETHER PURSUANT TO STATUTE OR OTHERWISE. THIS CLAUSE MAY ONLY BE AMENDED, CHANGED OR

REPLACED BASED ON A SEPARATELY EXECUTED SERVICE LEVEL AGREEMENT (SLA) WHICH MUST SPECIFICALLY OUTLINE SECURE HOSTING'S COMMITMENTS AND CUSTOMER COMPENSATION DUE TO SECURE HOSTING'S FAILURE TO MEET IT'S CONTRACTED COMMITMENTS.

- 11.3. Secure Hosting is not responsible for any selection or retention of, or the acts or omissions of, third parties in connection with the Services including those with whom Secure Hosting may contract on the Customer's behalf to provide portions of the Services.
- 11.4. IF SECURE HOSTING SHOULD BE FOUND LIABLE FOR LOSS, DAMAGE OR INJURY DUE TO FAILURE OF SERVICES, PRODUCTS OR EQUIPMENT IN ANY RESPECT UNDER ANY LEGAL PRINCIPLE OR DOCTRINE OF ANY KIND, IT WILL NOT BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES AND IN ANY EVENT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE CUSTOMER AGREEMENT, ITS LIABILITY FOR DIRECT AND ANY OTHER DAMAGES WILL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL CHARGES FOR THE SERVICES, PRODUCTS AND/OR EQUIPMENT IN QUESTION FOR THE BILLING MONTH DURING WHICH THE FAILURE OCCURRED. FOR AVOIDANCE OF DOUBT, SECURE HOSTING WILL NOT BE LIABLE FOR ANY LOST PROFITS, LOSS OF ANTICIPATED OR ACTUAL REVENUE, LOSS OF DATA, LOSS OF USE OF ANY INFORMATION SYSTEM, FAILURE TO REALIZE EXPECTED COST SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE CUSTOMER AGREEMENT OR THE PROVISION OF SERVICES, EVEN IF SECURE HOSTING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS.
- 11.5. The provisions of this section 11 will apply if loss, damage or injury, irrespective of cause or origin, results, directly or indirectly, to person or property from performance or non-performance of obligations imposed on Secure Hosting, its employees or agents by the Customer Agreement or from the negligence, active or otherwise, of Secure Hosting, its agents employees, directors, officer, affiliates and subsidiaries.
- 11.6. Secure Hosting will have no liability whatsoever to the Customer or any third person arising from the failure, for any reason, to activate any Services on the activation date requested by the Customer.
- 11.7. Secure Hosting will not be liable for and Secure Hosting will be indemnified and held harmless by the Customer against, all claims, demands, losses or liabilities, including but not limited to, fees and expenses of counsel, arising out of any of the following:
 - (a) claims for libel, slander, harassment, illegal, improper or unauthorized use of the Services or related facilities by any person, infringement of copyright or unauthorized use of any trade-mark, trade name or service mark, arising from the material, data, information or other transmissions of the Customer or those authorized by the Customer using Secure Hosting's facilities or Services;
 - (b) claims for infringement of intellectual property (including patents, trade-marks and copyright) arising from combining or connecting Secure Hosting's Services, equipment or facilities with services, equipment, facilities and systems of the Customer or the Customer's, employees or agents or those authorized by the Customer;
 - (c) claims by those to whom the Customer provides services or from whom the Customer may acquire services, equipment or facilities for use in conjunction with the Services;
 - (d) any and all business practices of the Customer or those authorized by the Customer;
or

- (e) damage to business or property or injury to or death of any person, occasioned by or in connection with any act or omission of the Customer or of any person utilizing the Customer's codes, services, equipment or facilities with or without the consent or knowledge of the Customer.
- 11.8. Without in any way impacting on the construction or interpretation of any other term of the Customer Agreement, the existence of any claim, demand, loss or liability described in section 10.7 will be deemed to be a material violation of the Customer Agreement.
- 11.9. THE CUSTOMER ASSUMES TOTAL RESPONSIBILITY AND RISK FOR THE USE OF THE SERVICE AND AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS SECURE HOSTING COMMUNICATIONS LTD., ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SERVANTS, SUBSIDIARIES, AFFILIATES AND THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE FROM ANY LOSS, DAMAGE, OR COST (INCLUDING LAWYERS' FEES) RESULTING FROM THE VIOLATION OF THESE TERMS AND CONDITIONS.
- 11.10. Section 10 will apply in the event of a breach of these Terms and Conditions or a breach of the Customer Agreement, by either Secure Hosting or the Customer. Section 10 will survive termination of the Customer Agreement and/or these Terms and Conditions.

12. NOTICE

- 12.1. Any notice, request, demand, consent or other communication provided or permitted under the Customer Agreement will be in writing and will be deemed to be sufficiently given if personally delivered, sent by fax, sent by e-mail or sent by registered mail postage prepaid, to the party for which it is intended at its address set forth in the Customer Agreement. Any notice so given will be deemed to have been received on the date on which it was delivered in person, sent by fax (with transmission confirmation), or sent electronically, or if sent by registered mail only (which method of service will not be a valid form of providing notice during a postal strike), five business days after the sending.

13. AMENDMENT

- 13.1. These Terms and Conditions and the Customer Agreement with attachments thereto, including the rates, charges or other fees associated with the Services are subject to change from time to time, except as noted in specific Term Contracts, as provided for in writing by Secure Hosting. **Upon notification of any such change, the Customer becomes liable for all new rates, charges or fees and is deemed to have accepted all changes, unless the Customer terminates the Customer Agreement by notice to Secure Hosting sent within 15 days from the Customer's receipt of such notification.** If the change in these Terms and Conditions, rates or charges is ordered or necessitated by any regulatory authority, these changes are binding on the parties and do not give rise to the opting out provision of this section. Further, any adverse affect by any regulatory authority on Third Party Providers will not give rise to the opting out provision of this section. If the Customer chooses to terminate, the termination Clause of Section 6.14 will not apply.

14. ENTIRE AGREEMENT

- 14.1. The Customer Agreement, including these Terms and Conditions and any attachments to the Customer Agreement and these Terms and Conditions, any modifications made by Secure Hosting as permitted hereunder and any enrolment and other order forms executed by Secure Hosting and the Customer in connection with the Customer Agreement constitute the entire agreement between the parties pertaining to the subject matter of the Customer Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no

agreements in connection with such subject matter except as specifically set forth or referred to in the Customer Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made either prior to, contemporaneous with, or after entering into the Customer Agreement, or any amendment or supplement thereto, by any party to the Customer Agreement or its directors, officers, employees or agents, to any other party to the Customer Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of the Customer Agreement, and none of the parties to the Customer Agreement has been induced to enter into the Customer Agreement or any amendment or supplement by reason of any such warranty, representation, opinion, advice or assertion of fact. Accordingly, there will be no liability, either in tort or in contract, assessed in relation to any such warranty, representation, opinion, advice or assertion of fact, except to the extent contemplated above. ONLY THESE TERMS AND CONDITIONS AND THE CUSTOMER AGREEMENT WILL APPLY REGARDLESS OF THE TERMS AND CONDITIONS CONTAINED IN ANY PURCHASE ORDER SUBMITTED BY THE CUSTOMER, AND THE TERMS OF THE CUSTOMER'S PURCHASE ORDER WILL BE VOID.

15. FORCE MAJEURE

- 15.1. No party will be liable under the Customer Agreement for failure to carry out its provisions to the extent that such failure is caused by sabotage, vandalism, accidents, fire, flood, acts of God, civil commotion, riots, strikes, lock-outs, insurrections, wars or any other civil or public disturbances, acts or restraints of any governmental authority, civil or military, including the orders and judgements of courts, or priorities granted at the request or for the benefit, directly or indirectly, of any governmental authority or any other cause beyond its control and which was not reasonably foreseeable as at the date of the Customer Agreement ("Force Majeure"). Secure Hosting or the Customer, as the case may be, will promptly inform the other of the existence of any condition of Force Majeure and will consult together to attempt to find a mutually acceptable solution to any impediments to the fulfilment of their respective obligations under the Customer Agreement.
- 15.2. If a condition of Force Majeure prevents a party from carrying out the material provisions of the Customer Agreement and the condition continues for a period longer than 60 days, the other party may terminate the Customer Agreement by written notice specifying the default and giving a termination date that is no less than 30 days after the date of notice.

16. LANGUAGE OF AGREEMENT

- 16.1. Secure Hosting and the Customer confirm that they wish to have the Customer Agreement, these Terms and Conditions and any attachments written in English only.

17. OTHER TERMS

- 17.1. Time is of the essence of the Customer Agreement. Words used in the singular number only will include the plural and *vice versa*, and words used in one gender will include the other genders.

18. CHOICE OF LAW AND SEVERABILITY

- 18.1. These Terms and Conditions and the Customer Agreement shall be construed and enforced in accordance with and governed by the laws of the Commonwealth of The Bahamas. The Customer agrees that the jurisdiction for resolution of any dispute arising under these "Terms and Conditions" shall be the Commonwealth of The Bahamas and the Customer hereby consents and submits to the jurisdiction of the courts of the Commonwealth of The Bahamas.

- 18.2. The Customer hereby agrees that any claim by it against Secure Hosting involving sums not exceeding US\$25,000.00 shall be submitted to binding Arbitration and the Arbitration Act of the Commonwealth of The Bahamas shall apply.
- 18.3. The Customer represents and warrants that it has full power and authority to execute and deliver the Customer Agreement and to perform its obligations thereunder. If an individual, the Customer warrants that he or she (a) is not a minor, and (b) will use the Services in the course of carrying on a business.
- 18.4. Secure Hosting's decision not to enforce a particular provision of this Agreement at any time does not waive its right to enforce that provision at some other time unless expressly waived in writing by Secure Hosting.
- 18.5. If any provision of the Customer Agreement or attachments or these Terms and Conditions is determined by a final non-appealable order of a court of competent jurisdiction to be invalid, Secure Hosting will be entitled, within 60 days after such determination to terminate the Customer Agreement on notice to the Customer. If no such notice is given by Secure Hosting, the invalid provision will be deemed to be void and the remaining provisions of the Customer Agreement will remain in full force.

SCHEDULE A
PAYMENT OPTIONS

1. Payment Methods

(b) Credit Card

The Customer may select the pre-authorized credit card payment method. The Customer may use the following credit cards: VISA, Master Card and American Express. The Customer will not dispute with the credit card company any amounts due to it in connection with the Services provided hereunder without first bringing the matter to the attention of Secure Hosting. If the Customer's credit card has expired, Secure Hosting may either request updated credit card information, bill directly with an administration fee of \$50.00 to cover a portion of the administrative costs involved or assume that the card has been renewed and adjust all applicable credit card information accordingly. (This payment method is not available for Dedicated Server Hosting services.)

(c) Wire Transfer (SWIFT)

The Customer may select the wire transfer payment method. Payments for monthly fees and all other charges will be processed by Secure Hosting on the first calendar day of the month. Please contact our offices for our SWIFT wire transfer instructions.

SCHEDULE B SOFTWARE LICENCE AGREEMENT

This is a legal agreement (this "**Agreement**") between the customer (the "**Customer**") and Secure Hosting Communications Ltd. ("**Secure Hosting**").

1. **Grant**

Secure Hosting hereby grants to the Customer a non-exclusive licence (the "**Licence**") to use software provided by Secure Hosting in connection with the services to be provided to the Customer by Secure Hosting (the "**Services**")

All such software and related documentation (collectively, the "**Software**") is provided to the Customer on the following terms:

The Customer may:

- install and use the Software on any single computer for the purpose of using Services;
- install and use the Software on additional computers so long as the first and subsequent computers are not used simultaneously and each is used solely for the purposes of using the Services; or
- Copy the Software solely for archival or back-up purposes, provided any copy must contain all of the original Software's proprietary notices.

The Customer may not:

- Permit others to use the Software except under the terms listed above;
- Modify, translate, reverse engineer, decompile, disassemble, or create derivate works based on the Software;
- Copy the Software (except for back-up purposes);
- Rent, lease, transfer or otherwise transfer rights of Software; or
- Remove any proprietary notices or labels on the Software.

2. **Software**

The Licence does not grant to the Customer any right to any enhancement or update.

3. **Title**

Title, ownership rights, and intellectual property rights in and to the Software will remain in Secure Hosting and/or its suppliers. The Software is protected by copyright law and international copyright treaties. Title, ownership rights, and intellectual property rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable copyright or other law. This Licence gives the Customer no rights to such content.

4. **Limited Warranty**

Secure Hosting warrants that for a period of 90 days from the date of acquisition of the Licence by the Customer, the Software, if operated as directed, will substantially achieve the functionality described in the documentation accompanying it. Secure Hosting does not warrant, however, that the Customer's use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure. In addition, the security mechanism implemented by the Software has inherent limitations, and the Customer must determine that the Software is free from defects in material and workmanship and will so remain for 90 days from the date the Customer acquired the Licence to the Software. If the Customer has paid a specific licence fee for the Software, Secure Hosting's sole liability for any breach of this warranty will be in the sole discretion of Secure Hosting: (1) to replace the defective media; or (2) to

advise the Customer how to achieve substantially the same functionality with the Software as described in the documentation through a procedure different from that set forth in the documentation; or (3) if the above remedies are impracticable, to refund the licence fee the Customer paid for the Software. If the Customer has not paid a specific licence fee, Secure Hosting may, in its discretion, undertake either or both of remedies (1) or (2) above but otherwise will have no liability to the Customer. Replaced Software will be covered by this limited warranty for the period remaining under the warranty that covered the original Software. Secure Hosting will use reasonable commercial efforts to repair, replace, advise or refund pursuant to the foregoing warranty within 30 days of being so notified.

This is a limited warranty and it is the only warranty made by Secure Hosting. Secure Hosting makes no other express warranty and no warranty of non-infringement of third parties' rights (some provinces and territories do not allow exclusions or limitations of this nature, so this exclusion and limitation may not apply to the Customer in whole or in part) and no oral or written information given by Secure Hosting, its employees or agents will create a warranty. The duration of implied warranties, including, without limitation, warranties of merchantability and of fitness for a particular purpose, is limited to the above limited warranty period; some provinces and/or territories do not allow limitations on how long an implied warranty lasts, so limitations may not apply to the Customer in whole or in part. None of Secure Hosting's dealer's agents, or employees are authorized to make any modifications, extensions, or additions to this warranty. If any modifications are made to the Software by the Customer during the warranty period; if the media is subjected to accident, abuse, or improper use; or if the Customer violates the terms of this Agreement then this warranty will immediately be terminated. This warranty will not apply if the Software is used on or in conjunction with hardware or software other than the unmodified version of the hardware and software with which the Software was designed to be used as described in the documentation accompanying the Software.

5. Limitation of Liability

Under no circumstance and under no legal theory, tort, contract or otherwise, will Secure Hosting or its service providers be liable to the Customer or any other person for any indirect, special, incidental, or consequential damages of any character including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction or any and all other commercial damages or losses, or for any damages in excess of the fees paid by the Customer to Secure Hosting for Internet services provided by Secure Hosting in the month prior to the month in which the Customer's claim arose, or for any claim by any other party. This limitation of liability will not apply to liability for death or personal injury to the extent applicable law prohibits such limitation. Furthermore, some provinces and territories do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to the Customer.

6. Termination

This Agreement will terminate automatically if you fail to comply with the terms and conditions described above. On termination, the Customer must destroy all copies of the Software. All limitations of warranties and liabilities will survive termination of this Agreement.

7. Audit

Secure Hosting reserves the right to have audits conducted to verify the Customer's compliance with this Agreement.

8. Miscellaneous

This Agreement represents the complete agreement concerning this Licence between the parties and supersedes all prior agreements and representations between them. The Customer acknowledges that it has read this Agreement, understand it and agrees to be bound by its terms and conditions. It may be amended only by a written amendment executed by both parties. The acceptance of any purchase order placed by the Customer is expressly made conditional on the Customer's assent to the terms set forth herein, and not those contained in the purchase order. If any provision of this Agreement is held to be

unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable. Secure Hosting may assign its rights and obligations under this Agreement to any affiliated entity without the Customer's prior written consent. The parties have required that this Agreement and all documents relating thereto be drawn up in English. This Agreement will be governed by the laws of the Commonwealth of The Bahamas. The Customer agrees that the forum for resolution of any dispute arising hereunder shall be the Commonwealth of The Bahamas and the Customer hereby consents and submits to the jurisdiction of the Commonwealth of The Bahamas.. This Agreement enures to the benefit of Secure Hosting's licensors for whom Secure Hosting contracts as in trust.