



Liquid Web LLC

HOSTING SERVICE AGREEMENT

This Hosting Service Agreement, consisting of the terms and conditions set forth below, the attached exhibits A, B and C ("Exhibit") each of which is incorporated in and made a part hereof by reference (the "Agreement"), is entered into as of 03-25-2017 (the "Effective Date") between Michigan State Housing Development Authority ("Customer") with a principal office at 735 E Michigan Ave Lansing MI 48912-1474 and Liquid Web LLC, a Delaware corporation ("Liquid Web") with its principal offices at 2703 Ena Dr., Lansing MI 48917-8585, Liquid Web and Customer are collectively referred to as "Parties", and individually as a "Party". In the event of a conflict between this Agreement and the Terms of Service incorporated herein, the terms of this Agreement shall control.

1. TERM OF AGREEMENT The term of this Agreement is 9 months (12-25-17) from the Effective Date ("Initial Term"), unless terminated earlier pursuant to paragraph 3 or the Terms of Service. After the Initial Term concludes, the Agreement will automatically renew for successive one (1) year periods (collectively the "Renewal Term(s)", the "Agreement Term"), until terminated by either Party under paragraph 3.

1.1 Term for individual Orders. The initial term for each individual Customer Order begins on the effective date stated in an Order or, if no effective date is stated, the initial term shall be begin on the date Liquid Web makes the Services available for Customer's use ("Effective Date") and continues for the period stated in the Order. If no period is stated in the Order, then the initial term shall be one (1) month. Upon expiration of the initial term, the Order will automatically renew for successive renewal terms of one (1) month each, unless and until one of us gives the other a written notice of non-renewal prior to the expiration of the initial term (or then-current renewal term, as applicable, following the process in 1.2 below.

1.2 Order Cancellation/Non-Renewal. Customer may give notice of non-renewal or cancelation of an Order by logging in to its account on www.manage.liquidweb.com and submitting a cancellation ticket. No other form of Order cancellation will be effective and this month-to-month agreement for services is automatically renewed each month until such notice of cancellation ticket is provided.

2. PURCHASE OF SERVICES

2.1 Purchase Price. The Customer agrees to purchase, at the prices specified, the services detailed in Services Description Exhibit A ("Services") for the term of this Agreement.

2.2 Additional Services. In the event Customer purchases services in addition to those contained in Exhibit A, by placing an order as specified in Exhibit C, paragraphs 1.1 through 1.6, such additional services and their payment terms are deemed to be covered by this Agreement

2.3 Taxes. Customer agrees to pay all applicable federal, state and local taxes and fees.

2.4 Overdue Payments. Monthly charges are payable in advance. Payments received later than 15 days after the date of invoice are subject to a late charge in an amount equal to 20% of the monthly recurring fee. Overdue amounts, including overdue late charges, are subject to interest at 1.5% per month (or the maximum legal rate if it is less than 1.5% per month).

3. TERMINATION AND EFFECT OF TERMINATION

3.1 Termination for Convenience:

(i) Liquid Web may terminate this Agreement for convenience at any time after the Initial Term upon providing thirty (30) days advance written notice to Customer of its intent to terminate.

(ii) Customer may terminate this Agreement for convenience by logging in to its account on www.manage.liquidweb.com and submitting a cancellation ticket no less than thirty (30) nor more than sixty (60) days prior to the date of termination.

3.2 Effect of Termination for Convenience. Upon termination for convenience, Liquid Web's obligation to provide Services will terminate as of the effective date of termination. If Customer terminates for Convenience all unpaid amounts due Liquid Web under this Agreement through the date of termination, as well as the early termination fee set forth in paragraph 4 below, are immediately due and payable.

3.3 Termination for Cause. This Agreement may be terminated for cause as follows:

3.3.1 Immediate Termination This Agreement may be terminated immediately upon notice to the defaulting party as follows:

(i) if either Party has executed an assignment for the benefit of creditors or filed for relief under any applicable bankruptcy, reorganization, moratorium, or similar debtor relief laws (except Chapter 11);

(ii) if either Party is in default because of its failure comply with any applicable federal, state or local laws, rules and regulations applicable to the Party's performance under this Agreement.

(iii) if a Customer is in default because of its breach of Liquid Web's Acceptable use policy set forth in paragraph 4 of the Terms of Service.

3.3.2 Termination after Failure to Cure. Upon written notice of a material breach of this Agreement, such notice to provide a ten (10) day period during which the defaulting party has an opportunity to cure any default, except those covered in paragraph 3.3.1, the ("Cure Period"). In the event the default is not resolved during the Cure Period, the Agreement will terminate on the day following the last day of the Cure Period.

3.3.3 Effect of Termination for Cause. If either party terminates for cause, Liquid Web's obligation to provide Services will terminate as of the effective date of the termination and all unpaid amounts due for Services provided to Customer through the date of termination are immediately due and payable.

4. EARLY TERMINATION FEE. In the event this Agreement or any of the Services covered in Exhibit A, are terminated by Customer for convenience pursuant to paragraph 3.1 or if Liquid Web terminates this Agreement for cause pursuant to paragraph 3.3 prior to the expiration of the Initial Term or any Renewal Term, Customer shall pay Liquid Web an early termination fee in an amount equal to the remainder of the unearned fees due for the Services specified in Exhibit A, for the remainder of the Initial Term or any Renewal Term. Individual Orders for Services not contained in Exhibit A, may be terminated as provided in paragraph 1.2 above, without terminating this Agreement.

5. ATTORNEYS' FEES. Customer will be responsible for all expenses, including reasonable attorney's fees incurred by Liquid Web when collecting any unpaid amounts due in accordance with this agreement.

6. NO WAIVER. The failure of either party at any time to enforce any right or remedy available to it under this Agreement shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by either party.

7. LIMITATION OF LIABILITY. In addition to the specific limitations of liability set forth in the Terms of Service incorporated herein, Liquid Web shall not, except in case of it's willful misconduct or gross negligence, be liable for any damages suffered by Customer as a result of the following:

7.1 The content of the information passing over its network.

7.2 Unauthorized access or damage to, alteration, theft, destruction or loss of, Customer's records, information, files or data.

7.3 Economic consequential damages (including lost profits and savings) or incidental damages, even if Liquid Web is informed of their possibility.

7.5 Claims against Customer by any third party; or

7.6 Any act or omission of any third party furnishing services and/or products, or the installation and /or removal of any and all equipment or supplies to Customer.

7.7 Any failure or delay in performance to the extent caused by causes beyond its reasonable control, including, without limitation, labor disputes, fires or other casualties, weather or natural disasters, damage to facilities, or the conduct of third parties ("force majeure").

8. **AMENDMENTS.** This Agreement may be modified or amended only by a written document signed by both Parties.

9. **NOTICES.** All notices hereunder shall be written and sent by U.S. Mail, return receipt required, to the address below (or at such different address as maybe designated by such party by written notice to the other party). All Notices will be deemed effective as of the date of confirmed delivery. Notices must be sent to the attention of:

Liquid Web LLC. 2703 Ena Drive Lansing, MI 48917 ATTN: Chief Financial Officer Telephone: (800) 580-4985 Fax: (517) 322-3994	Matthew Schoenherr Michigan State Housing Development Authority (517)373-6783, schoenherrm@michigan.gov 735 E Michigan Ave Lansing MI 48912-1474
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10. **RELATIONSHIP OF THE PARTIES.** The parties to this Agreement are acting as independent contractors. Neither party is the agent, partner, joint venturer or employee of the other, and neither shall have any authority to make any agreements or representations on the other's behalf. Each party shall be solely responsible for the payment of compensation, insurance and taxes of its own personnel, and such personnel are not entitled to the provisions of any employee benefits from the other party.

11. **REPRESENTATIONS.** Each Party represent and warrants that: (i) it is a duly organized and existing legal entity; (ii) it has full authority to enter this Agreement; (iii) the execution and/or performance

of this Agreement does not and will not violate or interfere with any other agreement by which the warranting party is bound; and (iv) it will not enter into any agreement whose execution/performance would violate the terms of or interfere with that Party's performance under this Agreement.


12. **HEADINGS.** The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this Agreement.

13. **SEVERABILITY.** If any portion of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree that any such invalid provision shall be replaced with a valid provision, which most closely approximates the intent and economic effect of the invalid provision.

14. **ENTIRE AGREEMENT.** This Agreement, and documents incorporated by reference, constitute the entire understanding and agreement between the Parties regarding the subject matter of this Agreement, and supersedes all prior or contemporaneous statements, promises, understandings and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

15. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed to be original, and all of which together shall constitute a single instrument. Any signed copy of the Agreement copied or reproduced and transmitted (in counterparts or otherwise) via photocopy, facsimile or other process that accurately transmits the original document, will be considered an original document and be sufficient to bind the parties to its terms.

The Parties have executed this Agreement as of the Effective Date.

By: 
Name: Brian Mills
Title: COS

Liquid Web, LLC
By: Amar K Patel
Name: Amar K. Patel
Title: VP, solutions

Tax ID: _____

Country of Origin: _____

Exhibit A

Service Description

- Storm VPS Server (Cloud) (SS.VPS): 0.00 / month
 - Server Type = 4GB - SSD: 140.00 / month
 - Server Type = CentOS 6 64-bit with cPanel Fully-managed: 10.00 / month
 - Bandwidth = 5 TB Monthly Transfer: 0.00 / month
 - Bandwidth Overage = %{units} GB Overage: / month (0.25 / nontemporal)
 - Backup Plan = No Backups: 0.00 / month
 - Public IP Addresses = %{units} Additional Public IPs: 1.00 / month (0 units)

Total Price: \$150.00 / month

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**Total 1 Month Prepaid Cost: \$150.00**

Anthony Coleman

Hosting Advisor

LiquidWeb

Ext - 3162

## **Exhibit B**

### **SERVICE LEVEL AGREEMENT**

#### **Hardware Replacement Service Level Agreement**

Liquid Web guarantees that in the event of a dedicated server hardware failure, the faulty hardware will be replaced within 30 Minutes of the failure being discovered by, or reported to Liquid Web. In the event the faulty hardware is not replaced within 30 minutes, Liquid Web will issue a credit for ten times the actual amount of additional downtime recorded by service monitoring logs, provided however, the SLA credit may not exceed the Customer's monthly recurring charge. The 30 minute response time guarantee excludes downtime required to perform software related maintenance, including rebuilding web accounts from backups, cloning hard drives, reloading the operating system, reloading and configuring applications, or rebuilding RAID arrays.

#### **Network Uptime Service Level Agreement**

Except as provided below, Liquid Web guarantees network uptime to be 100%. This guarantee assures that all major routing devices within our network are reachable from the global Internet 100% of the time.

#### **Network SLA Exclusions**

These network uptime guarantee excludes downtime caused by any of the following:

- **Scheduled Network Maintenance** - network maintenance will be required. Liquid Web will take commercially reasonable steps to minimize downtime during this maintenance. Customer will receive prior notification of scheduled maintenance at the e-mail address on file.
- **Hardware Maintenance** – When Customer hardware requires maintenance or replacement; Liquid Web will take commercially reasonable steps to minimize downtime associated with such maintenance or replacement.
- **Software Maintenance** - If Liquid Web manages Customer's server, when software updates are required to address security or performance issues, Liquid Web will take commercially reasonable steps to minimize downtime associated with such updates.



- **Malicious Attacks** - if a third party initiates a "Denial of Service" or other form of disabling attack against Customer's server or Liquid Web's network, Liquid Web will take commercially reasonable steps to stop the attack.
- **Legal Actions** - when Liquid Web is required, by court order to take action, causing downtime with regard to Customer's use of any part of the network. Liquid Web will not be responsible for any failure to comply with the terms of this SLA.
- **cPanel Issues** – Downtime caused by an automatic update of Customer's cPanel.

### **Network SLA Remedy**

In the event Liquid Web is solely responsible for causing network downtime, Customer is eligible for an SLA credit of 10 times (1,000%) the actual amount of downtime recorded in the service monitoring logs. For example, if Customer's server is unreachable for 1 hour (*beyond the 0.0% allowed*), you are eligible for 10 hours of credit provided SLA credit requirements set forth below are met.

### **Help Desk Initial Response Time Guarantee (30 Minutes)**

Trouble tickets submitted to Liquid Web's help desk system are guaranteed an initial response from a Heroic Support® technician within thirty minutes from the time of submission.. If Liquid Web fails to respond within thirty minutes, Customer will be eligible for an SLA credit of 10 times the amount of time exceeding our 30-minute SLA commitment. For example, if Customer's ticket goes 1 hour past our stated initial response time guarantee, Customer eligible for a 10-hour hosting credit provided SLA credit requirements set forth below are met.

### **Phone Answer Time Guarantee (59 Seconds)**

Liquid Web guarantees that a live Heroic Support Agent will answer Customer's phone call within 59 seconds from the time Customer selects the department with which it desires to speak. If Liquid Web fails to respond within fifty nine (59) seconds, Customer will be eligible for an SLA credit of 10 times the amount of time exceeding our SLA commitment. For example, if Customer's phone call goes 6 minutes past our stated initial response time guarantee, Customer's account will receive a 1-hour hosting credit provided SLA credit requirements set forth below are met..

### **LiveChat Initial Response Time Guarantee (59 Seconds)**

Liquid Web guarantees a Heroic Support Agent will answer Customer's LiveChat request within 59 seconds after Customer (i)selects the appropriate department to provide requested support, and (ii) accurately completes the pre-chat survey questions. If Liquid Web fails to respond within fifty nine (59) seconds, Customer will be eligible for a SLA credit of 10 times the amount of time exceeding our SLA



commitment. For example, if Customer's LiveChat goes 6 minutes past our stated initial response time guarantee, Customer will receive a 1-hour hosting credit provided SLA credit requirements set forth below are met.

### **SLA Credit Requirements**

SLA Credits for which the Customer is eligible will be paid if the following conditions are met:

- Liquid Web must receive the request for SLA credits within 5 business days of the SLA failure for which the credit is claimed.
- The amount of SLA credit paid will be no greater than the customer's monthly recurring charge.
- No SLA credit will be given for any SLA failure that occurs when Customer is in breach of this Agreement.
- Duplicate SLA credits for a single SLA failure will not be given.
- Liquid Web utilizes some third party services to provide responses to customers. These include, but are not limited to, our LiveChat system. If a third party system's failure prevents Liquid Web from honoring the Response Time SLA requirements the SLA failure will be ineligible for SLA credit.

## **Exhibit C**

### **TERMS AND CONDITIONS FOR LIQUID WEB HOSTING TECHNOLOGY SERVICES**

The following terms and conditions ("Terms of Service") apply to the provision of Liquid Web LLC, (Liquid Web) Hosting Technology Services ("Services") and to the Customer who orders Liquid Web Services ("Customer")

#### **1. ORDERING SERVICES**

1.1 For purposes of these Terms of Service an order means (i) the online order that you submit or accept for the Services, (ii) any other written order (either in electronic or paper form) provided to you by Liquid Web for acceptance that describes the Services you are purchasing and the price of such Services, signed by Customer, either manually or electronically, and/or, (iii) your use of the Services, ("Order").

1.2 Customer's use of the Services is governed by these Terms of Service, which are incorporated by reference in the terms of your Order.

1.3 Customer's use of the Services includes a representation that the individual placing the Order for Customer has the legal authority to enter into contractual commitments and make purchases for the Customer.

1.4 Liquid Web's obligation to begin providing Services is contingent on Customer's satisfying Liquid Web's credit approval criteria. Further, Liquid Web may, in its sole discretion, accept or reject any Order Customer submits.

1.5 Customer warrants and represents that the Order is placed on behalf of a business and not a consumer.

1.6 The provision of the Services described in an Order constitutes Liquid Web's acceptance of the Order.

#### **2. LIQUID WEB OBLIGATIONS**

Liquid Web will provide Services to Customer subject to these Terms of Service.

### 3. CUSTOMER OBLIGATIONS

3.1 Customer agrees: (i) comply with applicable law and these Terms of Service, (ii) pay the fees for the Services when due, (iii) cooperate with Liquid Web's investigation of service outages and any suspected breach of these Terms of Service.

3.2 Customer may resell the Services, in compliance with the terms of these Terms of Service. Customer remains responsible for use of the Services by any third party to the same extent as if Customer were using the Services. If you resell any part of the Services that includes Microsoft software, then you must include those Microsoft terms, and the terms of Acceptable Use defined in paragraph 4 below, in an enforceable agreement with your customers.

3.3 Customer is solely responsible for the security and content of all Customer data stored in Liquid Web's hosted environment and all such data is and at all times shall, remain Customer's exclusive property ("Customer Data").

3.4 Customer is solely responsible for: (i) determining the suitability of the Services in light of the type of Customer Data stored by you or your end-user(s); (ii) the use of Liquid Web's hosted environment tool and/or the Services by any of your employees or other user(s) who, either with or without Customer's authorization, gain access to the hosted environment; and (iii) taking all commercially reasonable steps to mitigate the risks inherent in transmitting Customer Data to and from and while stored on the hosted environment using the Services, including any Customer Data loss or corruption.

3.5 Customer shall encrypt at the application level all data, considered sensitive data, that must be treated as confidential under state or federal law or under Customer's contractual obligations to others. Sensitive data includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated there under) and Nonpublic Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated there under).

3.6 Customer shall be responsible maintaining all backups for all Customer Data on servers not covered by Liquid Web's Guardian Bare Metal Managed Backup ("Guardian"). In the event Liquid Web provides backup assistance on servers not covered by Guardian, it is provided, without additional charge, as a courtesy ("Courtesy Support") to Customer. Liquid Web has no liability for any lost or corrupted Customer Data resulting from the provision of Courtesy Support.



3.7 Customer is responsible for selecting and securing the appropriate authentication procedures to allow access to Customer's account. Customer is not authorized to provide account access, passwords, or passphrases for Liquid technical support to any third party.

3.8 Customer shall only use or allow the use of the Services in compliance with the terms of paragraph 4, (Acceptable Use) of these Terms of Service.

3.9 Customer shall promptly notify Liquid Web of any data breach or unauthorized access to Liquid Web's network or servers and accounts. Customer will take all commercially reasonable steps to cooperate with Liquid Web's investigation and resolution of the reported breach or unauthorized access.

#### **4. ACCEPTABLE USE**

4.1 Customer shall use the Services in compliance with all applicable state, federal, or international laws, statutes or codes, specifically including data protection and privacy laws, as well as laws relating to unsolicited commercial electronic messages.

4.2 Customer is responsible for all acts and omissions of its users in connection with receipt or use of the Services. Customer agrees, and will ensure its users agree, to act responsibly and not use the Services for any illegal or unauthorized purpose including, but not limited to:

- a. Hacking, phishing, spamming, identity theft, financial fraud, e-mail spoofing, virus distribution, network attacks, pirating software, harassment, using malware, spyware, copyrighted text, sharing illegal software, and any unauthorized use of images, internet accounts or computers or any activity that would violate the Controlling the Assault of Non-Solicited Pornography And Marketing (CAN-SPAM) Act of 2003.

- b. For the purposes of Acceptable Use, the term Spamming includes, but is not limited to: (i) sending unsolicited outbound bulk email regardless of the content; (ii) Junk mail; (iii) unsolicited commercial email; (iv) unsolicited instant messaging; (v) unsolicited mobile phone messaging advertising; (vi) email address cultivating, or any unauthorized collecting of email addresses without prior notification of the email address owner and (vii) mailing lists without closed-loop ("Confirmed Opt-in"), subscription confirmation and without retained and messages and unsubscribe links.

- c. Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.

- d. Monitoring data or traffic on any network or system without the express authorization of the owner of the system or network.
- e. Intentionally or recklessly introducing any virus or other contaminating code into the Liquid Web hosted environment.
- f. Collecting or using information, including email addresses, screen names or other identifiers, by deceit, (such as, phishing, Internet scamming, password robbery, spidering, and harvesting).
- g. Use of any false, misleading, or deceptive TCP-IP packet header information in an email or a newsgroup posting.
- h. Distributing software that covertly gathers or transmits information about a user.
- i. Any activity intended to withhold or cloak identity or contact information, including the omission, deletion, and forgery or misreporting of any transmission or identification information, such as return mailing and IP addresses.
- j. Interference with service to any user of the Liquid Web hosted environment including, without limitation, mail bombing, flooding, or deliberate attempts to overload a system and broadcast attacks.
- k. Any action that directly or indirectly results in any of Liquid Web's IP space being listed on any abuse database (i.e. Spamhaus).
- l. Conducting any gambling activity in breach of the terms paragraph 4.1.
- m. Distribution or any other use of copyrighted material not owned by Customer or Customer's end-user.
- n. Any action that is otherwise illegal or solicits conduct that is illegal under laws applicable to you or to Liquid Web.

## **5. TERMINATION FOR VIOLATION OF ACCEPTABLE USE**

5.1 Liquid Web has the right to investigate potential violations paragraph 4. If Liquid Web determines that a breach has occurred, then Liquid Web may, in its sole discretion:

- a. Restrict Customer's and its users' access to the Services;

- b. Remove or require removal of any offending Content;
- c. Terminate this Agreement for cause;
- d. Exercise any other rights and remedies it may have, at law or in equity.

5.2 Except in an emergency or as may otherwise be required by law, before undertaking the actions in paragraph 5.1, Liquid Web will attempt to notify Customer by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Customer will promptly notify Liquid Web of any event or circumstance related to this Agreement, Customer's or any user's use of the Services, or content of which Customer becomes aware, that could lead to a claim or demand against Liquid Web, and Customer will provide all relevant information relating to such event or circumstance to Liquid Web at Liquid Web's request.

## **6. BILLING AND ACCOUNT SET-UP**

6.1 Liquid Web will charge Customer and Customer agrees to pay when due the fees for the Services in accordance with its Order. Unless other payment methods have been approved, Liquid Web will charge Customer's credit card monthly, without invoice, beginning on the Effective Date and continuing on the same date each successive month until the end of the term. Customer shall pay all applicable taxes arising from Customer's use of Services or Customer's payment of amounts due to Liquid Web under the Order.

6.2 Liquid Web may increase fees for the Services provided under an Order upon thirty days advance written notice as follows:

- a. For Services provided on a month-to-month term, Liquid Web may, increase fees effective the first day of the next month following the notice period.
- b. For services provided over a term greater than one month, Liquid Web may, increase fees for the services provided under an Order as of the first day of the next renewal term beginning more than thirty (30) days from the date following the notice period.

6.3 Liquid Web may suspend all Services (including services provided under multiple Orders or other contracts with Customer) if charges to Customer's credit card or other payment facility are rejected, or Customer fails to make payment by an agreed upon alternative payment method. Liquid Web may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%).

6.4 In the event Liquid Web brings a legal action or engages a collection agency to collect Customer's unpaid balances, Customer will be liable for payment of all reasonable costs of collection, including



legal fees and court costs. Any "credit" that Liquid Web may owe Customer, such as a credit for failure to meet a Service Level Agreement, will be applied to fees due from you for Services, and will not be paid to you as a refund.

#### 6.5 Refunds and Guarantees:

- a. Refunds for prepaid Services will be given for full months only in accordance with the terms of the applicable Service Level Agreement.
- b. For shared hosting Services Liquid Web provides a 30-day money back guarantee detailed at [www.liquidweb.com/about/policies/shared-tos.html](http://www.liquidweb.com/about/policies/shared-tos.html).
- c. Virtual Dedicated, Virtual Private, and Dedicated servers are not included in the 30 Day Money Back Guarantee.
- d. To be eligible for a refund or claim a SLA guarantee, Notice of cancellation must be given before the month in question begins. Setup fees are not refundable. \$14.95 will be deducted from the money refunded if the user's domain was registered via Liquid Web's domain.

6.6 If there is a dispute with respect to any portion of an invoice, Customer shall pay the undisputed portion of the fees when due and provide written details specifying the basis of any disputed portion of the invoice.

6.7 Charges that are not disputed within sixty (60) days of the date charged are conclusively deemed accurate.

6.8 Customer authorizes Liquid Web to obtain a credit report on Customer at any time during the term of an Order.

#### 7 SUSPENSION OF SERVICES

7.1 Liquid Web may suspend some or all of the Services without liability to Customer if Customer (i) fails to pay the applicable fees for the Services when due (ii) the Services are being used, have been used, or will, with commercially reasonable certainty, be used in breach of these Terms of Service; (iii) Customer fails to cooperate with an investigation of any suspected breach of the Acceptable Use provisions of these Terms of Service; iv) Liquid Web reasonably believes that the Services have been accessed or utilized in any way by a third party without Customer's consent, or (v) suspension of services is reasonably necessary to protect Liquid Web's hosting environment.

7.2 Liquid Web will provide Customer reasonable advance notice of a suspension based on a violation of these Terms of Service and a chance to cure the violation on which the suspension is based, unless Liquid Web determines, in its reasonable commercial judgment, that an immediate suspension is necessary to protect Liquid Web's network and its customers' data from an imminent, significant operational, network integrity or security risk.

7.3 Suspensions based on Customer's breach of these Terms of Service will not relieve Customer's obligation to pay for the suspended Services during the period of suspension. Any suspension imposed under this paragraph will be terminated up Customer's cure of the breach causing the suspension. In the event the Customer is unable to cure the breach within fifteen (15) days from it's beginning, the suspension may be treated as a termination for Cause. If Customer's Services are compromised, then Customer must resolve the cause of the compromise before Liquid Web will reinstate service.

7.4 In the case that Service is suspended for Customer's breach of these Terms of Service Liquid Web shall have the right to deny access to, and/or, destroy data stored on the compromised server or account. Liquid Web may at its own discretion allow access to a suspended account.

## **8. HOSTING SERVICES/TECHNICAL SUPPORT /LIMITED WARRANTY**

8.1 Liquid Web will provide all Services in compliance with the Dedicated/VPS Service Level Agreement found at <https://www.liquidweb.com/about/policies/dedicated-sla.html>.

8.2 Liquid Web technical support services are provided via phone, email and livechat. Liquid Web has four categories of technical support (i) Fully Managed, (ii) Core Managed, (iii) Self Managed and (iv) Best Efforts/Courtesy Support the features of each category of support are described at: <http://www.liquidweb.com/support/>.

8.3 Liquid Web technical support is available only to its Customers.

8.4 Liquid Web has no support obligation to any other party.

8.5 Dedicated Server Support: Liquid Web provides Basic technical support and maintenance of dedicated servers at the rate specified in Customer's Order. Additional technical support will be provided, as agreed upon between the parties from time to time.

## **9. PRODUCT SALES TERMS**

9.1 Customer acknowledges that Liquid Web is reselling (and not itself providing) products purchased by customer including, without limitation, hardware, software and/or software licenses ("Product(s)")

9.2 Liquid Web shall pass through to Customer, the manufacturer's warranties for each Product and agrees to facilitate utilization of manufacturer's product return policies. In no event will Liquid Web provide product return or warranty coverage beyond that provided by the manufacturer. Products that are accepted for return are subject to the manufacturer's applicable restocking fee(s).

9.3 Customer acknowledges the terms and conditions governing the use of such Products shall be solely between Customer and the manufacturer.

9.4 Customer will not use the Products sold by Liquid Web for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. Customer agrees that Liquid Web is not liable, in whole or in part, for any claim or damage arising from use of such Products.

9.5. All shipments of Products by Liquid Web to Customer are FOB point of shipment. Insurance coverage, transportation costs and all other expenses applicable to shipment from Liquid Web to Customer's identified point of delivery will be the responsibility of the Customer.

9.6 Risk of loss will pass to the Customer upon delivery of the Products to the common carrier (regardless of who pays such common carrier) or the Customer's representative at Liquid Web's point of shipment.

9.7 Customer grants Liquid Web a security interest in and to the Products as security for payment in full of the purchase price. Customer authorizes Liquid Web to file and/or record any documents it deems necessary to perfect this security interest.

9.8 Customer will obtain all licenses, permits and approvals for the use of the Services or Products, which may be required by any governmental agency, foreign or domestic, having jurisdiction over the transaction.

## **10. BANDWIDTH PACKAGES**

Bandwidth usage for bundled bandwidth packages, for Internet data transfer, will be calculated based upon outgoing bandwidth transfer. Incoming data transfer will not be counted towards your bundled bandwidth usage. Incoming data transfer is free of charge. If your actual data transfer usage exceeds the amount of your bandwidth package you will be charged a bandwidth overage fee in addition to your Bundled Bandwidth Charge. The bandwidth overage fee will be specified in your order.



## **11. WARRANTY DISCLAIMERS**

11.1 LIQUID WEB DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL WARRANTIES, INCLUDING IMPLIED TERMS CONDITIONS OR WARRANTIES RELATING TO SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

11.2 ALL SERVICES PROVIDED BY LIQUID WEB ARE ON AN "AS IS" BASIS AND LIQUID WEB MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE PROVISION OF SUCH SERVICES.

## **12 . CONTENT DELIVERY NETWORK**

When using the Liquid Web Content Delivery Network (CDN) Customer is responsible for all bandwidth costs associated with the delivery of content over the public Internet, including any content delivery caused by unauthorized use of your CDN connection. Liquid Web will not enable "hot-linking" capability by default. In the event "hot-linking" capability is activated at Customer's request, Customer remains responsible for all network usage.

## **13. SCHEDULED MAINTENANCE AND DOWNTIME**

13.1 Liquid Web will use its commercially reasonable efforts to provide services 24 hours a day, seven days a week.

13.2 Customer acknowledges that from time to time the services may be inaccessible or inoperable for various reasons, including:

- a. Periodic maintenance procedures or upgrades ("Scheduled Downtime")
- b. Service malfunctions, and causes beyond Liquid Web's control or which are not reasonably foreseeable by Liquid Web, including the interruption or failure of telecommunications or digital transmission links.
- c. Hostile network attacks, or network congestion or other failures.

13.3 Liquid Web is not responsible for any downtime caused by conditions specified in 15.2 or due to Customer's actions that breach any term of this Order.

13.4 Liquid Web will provide a minimum of 48 hours advance notice to the Customer for Scheduled Downtime, and will use commercially reasonable efforts to minimize any other disruption, inaccessibility and/or inoperability of its web servers.

## **14. INDEMNITY**

14.1 Customer agrees to indemnify and hold Liquid Web, and each of its directors, officers, employees, shareholders and agents (each an "Indemnified Party") harmless from any and all damages, liabilities, fines, penalties, losses and/or claims of whatsoever kind or nature, arising from the Customer's use of Liquid Web's hosted environment or the Services.

14.2 Liquid Web may from time to time, at the request of the Customer, be enlisted to perform server administration tasks on Customer hardware, which is co-located at a Liquid Web facility ("Remote Hands Service"). Customer agrees and holds Liquid Web harmless against any damage caused to Customer in the performance of Remote Hands Service.

## **15. EXPORT**

Customer represents and warrants:

a. That Customer is not located in or a national of any country that is embargoed or restricted under export regulations or are otherwise a person or entity to which Liquid Web is legally prohibited from providing the Services.

b. Customer will not possess, use, import, export or resell (and shall not permit the possession, use, importation, exportation, or resale of) the Services or any Information or in which they are incorporated in any manner which would cause Liquid Web to breach any applicable export control laws, rules, or regulations.

c. Customer represents, and warrants without limitation, that it will not provide or facilitate administrative access to or permit use of the Services by any persons (including any natural person, government or private entity or other form of body corporate) that is located in or is a national of any country that is embargoed or highly restricted under applicable export laws, rules or regulations.

## **16. PROMOTIONAL USE**

Customer grants Liquid Web a non-transferable, non-exclusive license to utilize Customer trademarks and logos for Liquid Web promotional materials.

## **17. OWNERSHIP OF SERVICES/INTELLECTUAL PROPERTY**

17.1 No work or professional services performed and/or provided by Liquid Web under this Order shall be deemed to be "Work For Hire and shall remain at all times the sole property of Liquid Web. For so long as Customer is not in default on any obligation under these Terms and Conditions, Liquid Web grants Customer a non-exclusive, non-transferable license to use the work product of such services. Such license terminates upon the termination of the applicable Order or agreement pursuant to which they were performed. .

17.2 All software that provided to Customer is subject to these Terms of Service and any Order or agreement in which they are incorporated including software that we may authorize you to install on devices located outside of our data center. Customer shall not use any software provided by Liquid Web after the expiration or termination of these Terms of Service or any Order or agreement in which they are incorporated

17.3 Customer shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any software we provide you.

17.4 Unless permitted by the terms of an open source software license, Customer may not reverse engineer, decompile or disassemble any software we provide for Customer's use except and to the extent that Customer is expressly permitted by applicable law to do so and then following at a minimum of ten (10) days' advance written notice to Liquid Web. Any additional restrictions, which may apply to software we utilize in the performance of the Services, will be specified in the applicable Order.

17.5 Customer shall not mix software license ownership in utilizing Liquid Web services. Customers may not use a Liquid Web purchased software license in conjunction with a software license owned by Customer. The Customer is obligated to obtain all required software licenses,. In cases where the Customer provides all licensed products, including the OS, all licenses must be provided by the Customer and may not be mixed with Liquid Web licensed products.

## **18. LIMITATION OF DAMAGES AND LIABILITY**

EXCEPT AS OTHERWISE PROVIDED IN AN APPLICABLE SERVICE LEVEL AGREEMENT, LIQUID WEB'S LIABILITY TO CUSTOMER SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT OR SERVICE THAT IS THE BASIS FOR THE CLAIM. FOR REMOTE MANAGEMENT OF CUSTOMER'S ENVIRONMENT AND/OR LIQUID WEB CLOUD SERVICES, THE TOTAL LIABILITY OF LIQUID WEB FOR THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS SHALL NOT EXCEED AN AMOUNT EQUAL TO THE MOST RECENT SIX MONTH'S BASE CHARGE FOR THE SERVICE (S) THAT IS THE BASIS FOR THE PARTICULAR CLAIM. LIQUID WEB WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING,



WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR SERVICE, OR IN ANY WAY CONNECTED TO THESE TERMS OF SALE, EVEN IF LIQUID WEB HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.

#### **19. NO WAIVER**

The failure of either party to insist upon strict performance of any of the provisions of these Terms of Service will not be deemed a waiver of any breach or default. The remedies provided to Liquid Web hereunder are not a waiver of the remedies of Liquid Web under applicable law.

#### **20. LIMITATION OF ACTION**

The Customer may bring no action, regardless of form, arising out of or relating to an Order, more than three (3) months from the date on which the cause of action accrues. The parties expressly agree that this part, as to the Customer only, supplants and replaces any and all periods of limitation otherwise provided for by law and applicable hereto. All periods of limitation otherwise applicable to actions by Liquid Web remain as provided by law.

#### **21. DISPUTE RESOLUTION**

All disputes between Liquid Web and a Customer shall be determined by final and binding arbitration conducted by the American Arbitration Association pursuant to its then current commercial arbitration rules. The arbitrator shall decide any dispute in accordance with Michigan law, without the application of choice of law principles. Each party shall bear its own expenses and legal fees for the arbitration. The arbitration shall be conducted in Washtenaw County, Michigan, unless both parties agree in writing to a different location. The arbitration award is enforceable as a judgment of any court having proper jurisdiction.

#### **22. CONFIDENTIAL INFORMATION**

Information designated as confidential by either Liquid Web or Customer, whether before or after the effective date of these Terms of Service shall be held in strict confidence and used only for purposes of these Terms of Service. Except as required by law, no Confidential Information shall be disclosed without the prior written consent of the party designating the information as confidential. If either party is legally required to disclose any confidential information of the other party, the party so required shall notify the other party immediately and shall cooperate in seeking a reasonable protective order. This Section shall not apply to information, which is (i) in the public domain, (ii)

already known to the recipient, (iii) developed independently or (iv) received from a third party without similar restriction and without breach of this or a similar agreement.

### **23. SEVERABILITY**

If any provision of these Terms of Service is unenforceable as a matter of law, all other provisions will remain in effect.

### **24. EXCUSABLE DELAY**

Liquid Web will not be liable for any delay or failure of performance whatsoever due to acts of God, earthquakes, shortage of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics or other circumstances beyond Liquid Web's control.

### **25. NO PARTNERSHIP**

The relationship between the parties is that of independent contractors and not business partners. Neither party is the agent for the other, and neither party has the right to bind the other to any agreement with a third party.

### **26. ASSIGNMENT AND SUBCONTRACTING**

Neither party may assign the an Order in whole or in part without the prior written consent of the other party, provided however, Liquid Web may assign an Order in whole or in part to an affiliate with sufficient financial standing in order to meet its obligations under the Order or as part of a bona fide corporate reorganization or a sale of its business, and we may transfer your Confidential Information as part of any such transaction. Liquid Web may use affiliates and third party service providers to perform all or any part of the Services, but Liquid Web remains responsible to you under the Order for Services performed by its Affiliates and third party service providers to the same extent as if Liquid Web performed the Services.