



## TERMS OF SERVICE

This Master Service Agreement (“Agreement”) governs all services provided by ACTIVEHOST DATA CENTER SERVICES, LLC (“ActiveHost”), 2 Third Street, Troy, New York 12180, to its customers (“Customer”) unless otherwise provided in a written agreement signed by ActiveHost and Customer. For purposes of this Agreement, ActiveHost and Customer may, from time to time, be individually referred to as a “Party” and collectively as the “Parties”.

1. **SERVICES.** Customer hereby agrees to purchase from ActiveHost the data center and Internet services identified in the Service Order(s) (“Services”) pursuant to the terms and conditions of this Agreement. Additional Service Order(s) may be entered into between ActiveHost and Customer, and each such Service Order shall be deemed to be a part of this Agreement. The Service Order(s) and ActiveHost’s Acceptable Use Policy are incorporated in and made a part of this Agreement.
2. **EFFECTIVE DATE AND TERM.** The term of this Agreement shall commence on the date Customer accepts the terms and conditions of this Agreement (“Effective Date”) and shall continue for a period of thirty-six (36) months (“Term”). Customer shall purchase the Services identified in each Service Order (a) for the period of time stated in the Service Order (the “Service Term”) or (b) for the Term, if no period of time is stated in the Service Order. With respect to any Services for which the applicable Service Term or Extended Service Term (as defined below) has not expired by the end of the Term, the terms and conditions of this Agreement will remain in full force and effect until such Service Term or Extended Service Term expires. Unless otherwise stated in the Service Order, the Service Term for the Services will begin when Customer has been notified of end-to-end connectivity on the Services. Upon expiration of the Service Term relevant to the Services, the Service Term shall automatically be extended for successive one (1) year terms (“Extended Service Term”) subject to the terms and conditions then in effect with respect to such Services until the Services are terminated by either Party upon written notice given at least ninety (90) days prior to the termination of the then existing term. Although the terms and conditions will continue to apply during the Extended Service Term, the charges for the Extended Service Term shall be as set forth in Section 3.
3. **CHARGES AND PAYMENT.** Customer agrees to pay all charges, fees and taxes (“Service Charges”) arising in connection with the Services and as set forth in each Service Order. Billing for Service Charges will begin when Customer has been notified of end-to-end connectivity on the Services. The failure of Customer to provide Customer-owned or leased equipment at the time of notification by ActiveHost of end-to-end connectivity shall not preclude ActiveHost from billing for Service Charges. Service Charges will be invoiced to Customer on a monthly basis and Customer agrees to pay all Service Charges within thirty (30) days of the invoice date. The first invoice may include Service Charges pro-rated for the first monthly billing period. A service charge of 1.5% per month on unpaid

balances, or such lesser maximum allowable by law, shall be due and payable on all Service Charges not paid on or before the due date. If Customer defaults in the payment of any Service Charges when due hereunder, ActiveHost may temporarily suspend or immediately terminate the Services in addition to any other legal remedies it may have. Customer's obligation to pay the Service Charges is not contingent upon the performance of any third party. Customer's failure to order the correct Services shall not release Customer from its obligation to pay installation or other charges relating to the incorrect Services. If ActiveHost fails to invoice a Service Charge in a timely manner, such failure shall not constitute a waiver of the Service Charge. ActiveHost may charge its then applicable Service Charges during any Extended Service Term.

4. **SERVICES AND EQUIPMENT INSTALLATION.** Customer shall (a) obtain and maintain all consents, licenses and easements as are necessary to permit, and shall permit, ActiveHost representatives to install, deliver, operate and maintain the Services and ActiveHost-provided and installed equipment ("ActiveHost Equipment") at Customer's facilities; (b) allow ActiveHost access to Customer's facilities as is needed to install, configure, upgrade, maintain or remove ActiveHost Equipment; (c) make and maintain all reasonable site preparations necessary to permit the installation, maintenance and operation of the Services and any ActiveHost Equipment required to provide the Services; (d) provide ActiveHost with floor space, rack space, other space, heating, ventilation, cooling and power as is reasonably necessary for the installation and operation of ActiveHost Equipment; (e) not charge ActiveHost, and ensure that ActiveHost does not incur, any fees or expenses whatsoever in connection with Customer's performance of its obligations hereunder. Interconnection of the Services and ActiveHost Equipment with Customer's equipment will be performed by Customer at its expense unless otherwise agreed in writing by the Parties. Customer will be responsible for any damage to or loss of ActiveHost Equipment caused by Customer, its employees or agents. Upon termination or expiration of this Agreement, if Customer does not allow ActiveHost access to its facilities to remove ActiveHost Equipment, or if ActiveHost Equipment has been lost or is otherwise not available for removal by ActiveHost, Customer will immediately pay the fair market value of all such ActiveHost Equipment. ActiveHost shall not be responsible for the installation of equipment or software not provided by ActiveHost, nor shall ActiveHost be responsible for the transmission or reception of information by equipment or software not provided by ActiveHost. Customer shall be responsible for the use and compatibility of equipment and software not provided by ActiveHost. In the event Customer uses equipment or software not provided by ActiveHost which impairs Customer's use of the Services, Customer shall nonetheless be liable for payment of the Service Charges.
5. **CUSTOMER OBLIGATIONS.** Customer agrees (a) to arrange for the disconnection of its existing service if applicable, schedule a complete site survey if requested by ActiveHost, mutually agree with ActiveHost on network interface, provide ActiveHost with all technical information necessary to install the Services and provide an equipment technician at the Facility throughout installation if



- requested by ActiveHost; (b) not to resell or redistribute, whether for a fee or not, the Services or any portion thereof; (c) to use the Services only for Customer's business purposes; (d) to use the Services, including all content transmitted via the Services, in compliance with all applicable laws and regulations; (e) to keep ActiveHost Equipment free and clear of all liens and encumbrances and to be responsible for loss of or damage to ActiveHost Equipment while it is located at Customer's facilities; (f) to notify ActiveHost of any interruption of Services only after Customer has determined that the trouble is not being caused by Customer or its equipment; and (g) to be solely responsible for the selection, implementation and maintenance of security features for the protection against unauthorized or fraudulent use of the Services.
6. **SERVICES TERMINATION BY CUSTOMER.** If Customer terminates the Services before the end of the Term for reasons other than cause, Customer shall immediately pay (a) all accrued and unpaid Service Charges incurred through the date of such termination, (b) an amount equal to the monthly Service Charges associated with the terminated Services multiplied by the number of months remaining in the Term from the date of such termination (pro-rated in the event of a partial month), (c) all Service Charges waived at the commencement of this Agreement and (d) all charges payable to any third party suppliers for which ActiveHost is or becomes contractually liable in connection with the Services or with any such termination. Customer (a) acknowledges that the Service Charges are based on Customer's commitment to utilize the Services for the Term, (b) agrees that ActiveHost's damages will be difficult to ascertain if Customer terminates the Services before the end of the Term for reasons other than cause and (c) agrees that the foregoing charges are liquidated damages and not a penalty. Termination of the Services must be in writing to ActiveHost and ActiveHost has thirty (30) days to complete the disconnection of the Services. Customer is responsible for all Service Charges for the Services during the thirty (30) day disconnection period. The thirty (30) day disconnection period begins on the day ActiveHost receives Customer's written termination notice.
7. **SUSPENSION OF SERVICES BY ACTIVEHOST.** In addition to its rights to suspend Services as set forth in Section 3, ActiveHost shall have the right to suspend, or limit the use of any Services provided under this Agreement without liability and with notice as required by law to Customer, for the following reasons: a) the Services are being used in violation of any applicable federal, state, or local law, ordinance or regulation; b) the Services are being used in an unauthorized or fraudulent manner or in violation of ActiveHost's Acceptable Use Policy; c) the Customer's use of the Services adversely affects ActiveHost's equipment or its service to others; or d) a court or other governmental authority having jurisdiction issues an order prohibiting ActiveHost from furnishing the Services to Customer.
8. **TERMINATION.** If ActiveHost shall be in material breach of this Agreement, Customer may terminate the specific Service to which the breach pertains upon

30 days written notice unless ActiveHost cures such breach within such 30 day notice period. The foregoing shall be the exclusive remedy of Customer for any ActiveHost breach of this Agreement. If Customer (a) fails to pay any Service Charges when due under this Agreement or (b) shall be in any other material breach of this Agreement and fails to cure such other material breach within 30 days of written notice thereof from ActiveHost, ActiveHost shall have the right without further notice to (1) bill and declare due and payable any early termination charges set forth in this Agreement or in the Service Order(s) and/or (2) terminate the specific Service to which the breach pertains, with Customer remaining liable for damages. Upon termination of any Service, Customer is liable for any unpaid Service Charges for the terminated Service up to the time of termination. This Agreement may not be terminated and will continue in full force and effect with respect to all Services that are not the subject of such breach. Further, if Customer fails to pay any amount due hereunder as it becomes due, in addition to any other remedies it may have in law or equity or hereunder, ActiveHost shall have the right to recover all costs incurred by ActiveHost to collect the same including attorney's fees.

9. LIMITED WARRANTY, DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY. ACTIVEHOST WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE THE SERVICES SUBSTANTIALLY IN ACCORDANCE WITH THE SERVICE DESCRIPTIONS CONTAINED IN THE SERVICE ORDER(S). IF THE SERVICES DO NOT FUNCTION SUBSTANTIALLY IN ACCORDANCE WITH THE SERVICE DESCRIPTIONS, THROUGH NO FAULT OF CUSTOMER OR ITS AGENTS, ACTIVEHOST'S SOLE OBLIGATION IS TO REPAIR AND RESTORE THE SERVICES AT ACTIVEHOST'S EXPENSE. THE FOREGOING WARRANTY AND REMEDY IS ACTIVEHOST'S EXCLUSIVE WARRANTY AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ACTIVEHOST WILL PROVIDE THE SERVICES "AS IS" AND WITH ALL FAULTS. ACTIVEHOST HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE AND NONINFRINGEMENT, WITH REGARD TO THE SERVICES. IN NO EVENT WILL ACTIVEHOST BE LIABLE FOR THE COST OF COVER OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES OR LIABILITIES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO LOSS OF DATA, INFORMATION, REVENUE, PROFIT OR BUSINESS) ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE THE SERVICES OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY EVEN IF ACTIVEHOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACTIVEHOST'S LIABILITY ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE THE SERVICES OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO THE AMOUNT

ACTUALLY PAID BY CUSTOMER FOR THE SERVICES DURING THE THREE CALENDAR MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CAUSE OF ACTION AROSE REGARDLESS OF THE AMOUNT OF DAMAGES CUSTOMER MAY INCUR AND WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY.

10. INDEMNIFICATION. Customer agrees to defend and hold ActiveHost harmless, at Customer's expense, from and against any and all third party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by ActiveHost arising out of or relating to Customer's (a) violation or breach of any term of this Agreement or (b) misuse of the Services.
  
11. CONFIDENTIAL INFORMATION. Commencing on the date Customer executes this Agreement and continuing for a period of two (2) years from the termination of this Agreement, each Party shall protect as confidential, and shall not disclose to any third party, any Confidential Information received from the disclosing Party or otherwise discovered by the receiving Party while this Agreement is in effect, including, but not limited to, the pricing and terms of this Agreement, and any information relating to the disclosing Party's technology, products, services, business affairs, customers, personnel and marketing or sales plans (collectively the "Confidential Information"). The Parties shall use Confidential Information only for the purpose of this Agreement. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (a) is in the possession of the receiving Party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (b) is or becomes publicly known, through no wrongful act or omission of the receiving Party; (c) is received without restriction from a third party free to disclose it without obligation to the disclosing Party; (d) is developed independently by the receiving Party without reference to the Confidential Information, or (e) is required to be disclosed by law, regulation, or court or governmental order.
  
12. INTELLECTUAL PROPERTY. This Agreement does not grant Customer a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property now or hereafter owned, controlled or licensable by ActiveHost. The Services may be subject to the terms, conditions and restrictions contained in agreements between ActiveHost and its vendors, and ActiveHost agrees to inform Customer of any such terms, conditions and restrictions that may limit Customer's use of the Services. CUSTOMER AGREES THAT ACTIVEHOST HAS NOT MADE ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY CUSTOMER OF THE SERVICES WILL NOT GIVE RISE TO A CLAIM OF INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT.



13. **FORCE MAJEURE.** Neither Party is liable for any delay or failure in performance under this Agreement arising out of acts or events beyond its reasonable control, including but not limited to acts of God, war, terrorist acts, vandalism, fire, flood, adverse weather conditions, cut cable, explosion, riot, embargo, acts of government or third parties, labor disputes or strikes, or unavailability of necessary facilities or equipment. Either Party's invocation of this provision shall not relieve Customer of its obligation to pay for any Services actually provided to Customer.
14. **GOVERNING LAW AND JURISDICTION.** This Agreement and the attached Service Order(s) shall be governed by and construed under the laws of the State of New York without regard to any conflict of law principles to the contrary. Customer hereby irrevocably submits to jurisdiction of the state and federal courts located in Albany County, New York, with respect to any action or proceeding under this Agreement or relating to the Services. Customer will not prosecute any action, suit, proceeding or claim arising under or by reason of this Agreement except in such courts.
15. **ENTIRE AGREEMENT.** This Agreement, including the Service Order(s) and Acceptable Use Policy, sets forth the entire agreement between ActiveHost and Customer with respect to the Services and the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations, representations, understandings and agreements, whether written or oral. No amendment, modification or waiver of any of the provisions of this Agreement will be valid unless set forth in a written instrument signed by the Parties to this Agreement. No representations or warranties, express or implied, have been made or relied upon in the making of this Agreement other than those contained in this Agreement.
16. **ASSIGNMENT.** Except as set forth in this Section, neither Party may assign this Agreement without the prior written consent of the other Party. ActiveHost may assign its rights and obligations hereunder (a) to a parent, affiliate or subsidiary of ActiveHost or (b) pursuant to a merger, consolidation, acquisition, reorganization or sale or transfer of all or substantially all of its assets.
17. **RELATIONSHIP OF THE PARTIES – INDEPENDENT CONTRACTOR.** It is expressly understood and agreed that each Party is acting as an independent contractor and is not an agent or employee of the other Party for any purpose. Neither Party has authority to assume or create any obligation for or on behalf of the other Party, express or implied, with respect to this Agreement or otherwise.
18. **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable, the remainder



of this Agreement will remain in full force and effect and will be interpreted in such a manner as to carry out the full intention of the Parties.

19. **NOTICES.** Any notice required or permitted to be sent to ActiveHost under this Agreement must be delivered by certified mail, return receipt requested, or by an international courier service to the address set forth in this Agreement. Notice so sent will be deemed effective three days following deposit in the mail, with proper postage prepaid, or one day following delivery to an international courier service, prepaid for overnight delivery. Any notice to Customer required by this Agreement or given in connection with it, shall be emailed to Customer and shall be effective five (5) business days after it is sent via email.
20. **WAIVER.** The failure of either Party to enforce any provision of this Agreement or to exercise any right is not a waiver of the provision or right, and does not affect the validity of this Agreement. Any waiver must be in writing and signed by both Parties.
21. **COMPLIANCE WITH LAWS.** Each Party will comply, at its expense, with all applicable federal, state and local laws, ordinances, codes, rules and regulations in its performance under this Agreement.
22. **MISCELLANEOUS.** The terms and conditions of any purchase order submitted by Customer (whether signed by one or both Parties) shall not serve to modify the terms and conditions of this Agreement or any Service Order(s) and such terms and conditions shall be void and of no effect. Nothing in this Agreement may be interpreted or construed for or against either ActiveHost or Customer because that Party drafted or caused that Party's attorney to draft any of its provisions. The headings in this Agreement are for convenience only and are not intended to have any substantive significance in interpreting this Agreement. A Party may not bring an action arising out of this Agreement more than two (2) years after the accrual of the cause of action. The Parties waive the right to invoke any different statute of limitation on the bringing of actions under state and federal law. Except as set forth in the Service Order(s), ActiveHost is not subject to any performance intervals, performance measurements, performance credits or penalties in connection with its performance of this Agreement.
23. **SERVICE CALL CHARGES.** ActiveHost may charge Customer for service calls, if a service problem is determined not to be the fault of ActiveHost, at the rates generally charged by ActiveHost to its customers, with a one hour minimum.
24. **INTERRUPTION OF SERVICE.** ActiveHost reserves the right to suspend service without notice to Customer for a planned service outage caused by scheduled maintenance or planned enhancements or upgrades to its network of sixty (60) seconds or less. ActiveHost reserves the right to suspend service upon



twentyfour (24) hours prior notice to Customer for a planned service outage caused by scheduled maintenance or planned enhancements or upgrades to its network of over sixty (60) seconds. Such planned service outages shall occur between 12 am and 6 am, EST or EDT.

25. By checking I agree to the Terms of Service, I certify that the individual and/or entity procuring these services online is the end user and is in full compliance with the rules and regulations promulgated by the Office of United States, Department of Treasury - Office of Foreign Assets Control