

# TERMS OF SERVICE

We appreciate your business and look forward to a productive working relationship with you. This "Terms Of Service" (the "TOS") sets out the rights, responsibilities and legal obligations of the parties to it. The individual or entity placing an order for Services is referred to in this TOS as "Customer," "you" or "your" and is the individual, or entity, designated as the "owner" in our records. The entity providing the services is referred to as "we," "us" or "our." The individual or entity using the Services, if different than the Customer, is referred to as the "End User." The "Services" are the products, technologies and other items purchased by the Customer as set out on our web page describing them on the Effective Date ("Order Form"). The Effective Date of this TOS is the date you tick "I have read and agree to the Terms of Service." as that date is recorded by our servers.

## 1. **The Services.**

- a. The Services will be provided as set out on the Order Form as of the Effective Date. The Services will be provided pursuant to our brand offering for those Services as shown on the Order Form at the time of your order. Services may not be available immediately. We agree to provide those Services during the term as set out on the Order Form . However, we may make changes to the Services during the Term if required by law, a third party vendor who provides aspects of the Services to us, or if your use of the Services violates our TOS. New customers may be offered Services that are different than the Services you have purchased. We have no obligation to make those Services available to you. Should there be a conflict between this TOS and the Order Form, the Order Form will prevail.
- b. The Services are provided as set out on the Order Form and as described on our website on the Effective Date.
- c. The security of your passwords and other access devices is your responsibility. We shall be entitled to rely on the instructions, or

operations, of any entity accessing the Service using your passwords and/or access devices. You agree to notify us immediately should any of these items become lost, stolen or compromised.

- d. If there are any critical maintenance. We agree to give you 24 hour notice of our intent to suspend the Services for this reason. We will provide this notice to you by email to the address we have in our records. Our notice will, at a minimum, set out the reasons for the maintenance, the features to be affected, and the period of time the maintenance will take place. On infrequent occasions, we may be required to undertake emergency maintenance, and we will be unable to provide you with the notice set out in this paragraph. We will use reasonable efforts to ensure that maintenance does not interfere with your operations; however, in order to ensure the continued stability of our operational platforms, our maintenance activities may take precedence.
- e. You agree and understand that Services and/or related support may not be available at certain times as a result of technical difficulties, equipment malfunctions, during scheduled maintenance, or as a result of circumstances beyond our reasonable control. You also understand and agree that we make no representation that Services and/or related support will be available on a continuous or uninterrupted basis.
- f. You agree that we have no obligation to back-up your data and you should independently take appropriate steps to maintain data in accordance with your needs and requirements. You specifically agree that you understand that Backup Services, as defined below, are not fool-proof, that they will not back-up all data, and that you will use a second source of back-up. Under no circumstance will we have any liability or responsibility for the loss of back-up data, content or other information, unless caused by our negligence or willful misconduct.
- g. If you purchase the service with Backup Services from us, they are provided on an as-is and as-available basis, as a supplement to, and not in lieu of, your own back-up efforts. While we will use commercially reasonable efforts to ensure the effective operation of the Backup Services, you expressly agree that no

back-up program or service is error-free or fail-safe. In the event of an interruption or failure of the Backup Service, our only obligation is to restore your server to operating condition. It is your responsibility to restore the functionality of your website and program. You may wish to maintain an operating copy of your data for this purpose..

- h. Backup Services are designed for disaster recovery. Should you, or a third party, request that data held by us using the Backup Services be used for a purpose other than disaster recovery, for example in litigation, we have no obligation to provide the data to you. Should we determine, in our sole and exclusive judgment, to provide the data to you, or should your data be subpoenaed, or disclosure of it otherwise compelled, it will be provided at our convenience and you will be charged our prevailing hourly rate. You will also be responsible for any attorneys' fees we incur in reviewing, responding to or producing your data, and required to pay us a retainer to secure your obligations.
- i. You must provide certain current, complete and accurate account information for your Services. You must maintain and update this information as needed to keep it current, complete and accurate.
- j. We reserve the right to relocate the equipment used to provide the Service at any time. You will have no physical access to this equipment.
- k. All Services will set a proper resource limit (Include but not limited to CPU, Memory, Disk IO and Network) to ensure the service normal.

## **2. Fees.**

- a. Payments for the Services, the due date, and all other information related to the assessment and collection of amounts owed are set out on the Order Form . If the Order Form does not contain a payment date, Fees are due monthly. Upon the renewal of a Service Term, the Fees will be set to our standard fee for the particular Service. Discounts provided to new Customers may not be extended to Services you have already agreed to purchase. If we do not collect Fees immediately, your service may be suspended.

- b. During the Term, we will only increase the Fees in the following circumstances:
  - i. you purchase additional Services and those Services have additional Fees;
  - ii. a regulated entity, such as a utility, increases their charges to us; or
  - iii. a vendor adds surcharges or additional fees based on your use of the Services. We agree to provide you with thirty (30) calendar days written notice prior to any change in the Fees. Notice will be provided to the email address in our records
- c. Fees are not refundable.
- d. Taxes may not be included in the prices set out on your Order Form. If we are required to collect taxes, they will be added to the Fees, and you agree to furnish us information necessary to calculate them and you agree to pay them once calculated. We will not charge you taxes based on our income.
- e. Charges assessed by third parties will be added to the Fees within thirty (30) calendar days from the date we receive them. You agree to pay these charges regardless of the length of time that may have passed.
- f. If you do not pay the Fees when due, we may suspend and or delete any and all Services. Following suspension of Services for non-payment, we are not required to reinstate Services until:
  - i. you have paid in full all Fees then due, including late fees and any cost of reinstating Services; and
  - ii. you provide us satisfactory assurance as requested by us (such as a deposit) of your ability to pay for the Services for the remainder of the applicable Service Term. If you fail to timely cure the non-payment within the timeframe specified by us, you will be deemed to have terminated the affected Services as of the effective date of Service suspension. Your failure to pay Fees when due shall be treated as termination for convenience by you subject to Early Termination Fees, if any, described in this TOS. You will not receive credits or other benefits during the period you have failed to pay any Fees, and you may not withhold payment of Fees during any dispute.



those items are directed away from us. We have no responsibility to maintain backups following termination (including as regards Hosted Personal Data), nor to forward email to another provider or to point DNS for your domain names away from us.

4. **The Parties Own Their Intellectual Property.** Each party retains the intellectual property owned by, or licensed to, them. To perform, and use, the Services the parties each grant to the other a limited license to use and distribute that intellectual property only as strictly necessary to provide or use the Service. Other than as set out in the prior sentence, or in this TOS, neither party grants to the other, and neither shall have, any right, title, claim or interest in, or to, the other party's intellectual property, or that which is licensed to any party, nor will a party decompile, disassemble, or reverse engineer the other party's intellectual property, or that which is licensed to a party. Suggestions provided to us used by us to improve the Service are our intellectual property.

5. **We Stand Up for Each Other.**

- a. We agree to indemnify, defend and hold you, your employees, directors and officers ("Your Indemnified Parties") from any and all third party actions, liability, damages, costs and expenses (including, but not limited to, those attorneys' fees and expenses charged to us) arising from, or relating to, personal injury or property damage resulting solely from our gross negligence or willful misconduct. You waive and release all claims against Our Indemnified Parties, and agree that Our Indemnified Parties shall not be liable for injury to person or damage to property sustained by Your Indemnified Parties caused by the Services, or otherwise relating to this TOS, except if such injury or damage results solely from our gross negligence or willful misconduct.
- b. You agree to indemnify, defend and hold us, third parties who provide aspects of the service to us, contractors, subcontractors, affiliates, employees, directors and officers ("Our Indemnified Parties") from any and all third party actions, liability, damages, costs and expenses (including, but not limited to, those attorneys' fees and expenses charged to us) arising from, or relating to:
  - i. personal injury or property damage resulting from your acts, or inaction, or those of any individual or entity

identified as Your Indemnified Parties below, as well as End Users;

- ii. any claim by you, Your Indemnified Parties, or End Users, other than a claim based solely on our gross negligence or willful misconduct;
- iii. any claim by your customers, including End Users, relating to, or arising out of, your, or any End Users' services or the Services provided under this TOS;
- iv. any claim that you have failed to fulfill a contractual obligation with a third party;
- v. any claim resulting from your failure to obtain consents or licenses necessary for you, or your End Users, to use the Services; and
- vi. any claim by a party claiming by, through, or under you, or an End User, to the extent that such a claim, if sustained would result in any greater obligation or liability to us than what we have undertaken to you in this TOS.

**6. Our Liability is Limited.**

**7. We Take Security Seriously.** We implement and maintain technical and organisational security measures to safeguard the Hosted Personal Data from unauthorised or unlawful processing or accidental loss, damage or destruction. However, many of the resources associated with the Services are co-managed with you. You are solely responsible for the security of those aspects of the Services that are co-managed, and you agree to manage them in a way that does not impact the security of our network as a whole. The Services are configured for standard deployment. This configuration may not meet your security needs. It is your responsibility to configure the Services to meet your Security needs. We are not responsible for the manner in which you customize the configuration to suit your needs or its results. Should we determine that there has been unauthorized access to the Services, we may consult with a professional security agency to determine our best course of action and if advised, we agree to notify you in writing as soon as we have determined our course of action with regard to a breach. We may take action, including suspending all, or part of the Services, to isolate and mitigate the cause of a Breach. We have no liability to you for the effects of that suspension. The Breach Notification may contain preliminary and unconfirmed information;

however, it is provided to you to assist in your efforts to mitigate the effects of a Breach. To the extent you rely on a Breach Notification, you do so at your own risk. We each agree to reasonably cooperate with each other to investigate the facts and circumstances involved in a Breach. To the extent our cooperation requires us to devote time and resources above and beyond those extended by us in conjunction with a typical Breach investigation, or should we be asked to cooperate with a governmental investigation, you will be billed at our standard consulting Fees. Any information we provide to you in conjunction with a Breach, including the Breach Notification, shall be our Confidential Information.

8. **Compliance with Laws.** Each party agrees that it will obtain and maintain all permits, licenses or certificates that are required by any regulatory body for the provision or use of the Services. Each party will comply with all applicable laws in performing its obligations, and exercising its rights under this TOS. Unless specifically set out in your Order Form, we do not warrant, nor have we represented to you that the Services meet any particular industry standard.
9. **We own the IP addresses used by the Services.** Upon termination, they must be relinquished by you. The Services will have either a shared or dedicated IP address. We cannot guarantee this IP address will never change. We make a reasonable effort to avoid IP address changes but due to many factors, including network configuration changes, you will be given advance e-mail notification of such a change.
10. **General Provisions.**
  - a. We will use your name and email address to send newsletters on occasion to you. These newsletters may include information on promotions, services, and the company. Out of respect for your privacy, we provide you a way to unsubscribe in each promotional email. You may opt-out of these communications by clicking the unsubscribe link provided. We will send you strictly service-related announcements on occasion when it is necessary to do so; for example, if there is network maintenance you will receive an email.
  - b. The fact that one party fails to exercise, partially exercises, or delays exercising a right, remedy or power available to it in this TOS is not a waiver or preclusion of a right to do so in the future. The waiver by a party of time for performance, or extension of



the time to do so, shall not constitute a waiver of the act or condition itself.

- c. Either party may assign this TOS to an affiliate if the original signatory to the TOS remains fully responsible for the rights and obligations of the affiliate. Otherwise, you may only assign this TOS with our written consent. However, the Services may be performed by our corporate subsidiaries, its agents or subcontractors, without your consent. Any other attempt to assign, without written consent, shall be null and void. This TOS shall be binding upon and inure to either party's benefit and their respective successors and permitted assigns.
- d. Should a particular provision be held to be illegal or unenforceable in any jurisdiction, that provision shall be effective to the extent of such illegality or unenforceability, without invalidating the remaining provisions, and the provision at issue shall be restated to reflect the original intentions of the parties, to the greatest extent possible, and in accordance with the law. Section, paragraph and other titles are for ease of reference only, and they are not considered to be part of this TOS.
- e. This TOS, together with all documents incorporated by reference, states the entire agreement between the parties. Except for pre-existing obligations of confidentiality, non-disclosure and non-competition, with respect to the subject of this TOS, it supersedes all previous proposals, negotiations and other written or oral communications between the parties.
- f. This TOS is the result of negotiations between equally situated parties. Each party has had the ability to protect their legal and other interests, and have had, and do have, a full and complete opportunity to review, analyze, evaluate, negotiate, edit and draft the terms of this TOS. Accordingly, this TOS shall not be strictly construed or enforced against any party, and any ambiguity in any term or condition contained in this TOS shall not be interpreted in favor of one party and against another party, based upon any rule of construction whose premise is draftsmanship of this TOS or up on the relative bargaining position of the parties.

- g. If there is a conflict between the terms of this TOS and Order Form, they shall have the following precedence: Order Form and TOS.
- h. The parties are independent contractors. Unless in the Order Form the Customer specifically grants us the right to enter into contracts on its behalf, neither party shall have the right to enter into contracts on the other's behalf. Under no circumstances will either party have the authority to make any representations, claims or warranties of any kind on behalf of the other party, its affiliates, agents, subcontractors, licensors or third-party suppliers.
- i. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation, acts of God, telecommunications interruptions, earthquake, labor disputes, shortages of supplies, riots, war, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay. The party affected by the Force Majeure shall notify the other party as soon as possible, but in no event less than ten (10) days from the beginning of the Force Majeure event.

11. **VPS Services.** If your Order Form states that the Services included "VPS Services," the following paragraphs apply to those Services described as VPS Services, and only to those Services. Should any of these paragraphs differ from prior paragraphs, these paragraphs shall prevail:

- a. Your incoming and outgoing bandwidth will be monitored and combined, and VPS will be limited the bandwidth set out in the Order Form.
- b. VPS Services may have limitations on both the bandwidth and/or throughput you may use. These limitations are generally set out on your Order Form. However, you may not use the Services in a way that jeopardizes our ability to provide services to other Customers or the stability of our network. Should we determine that you have used the Services in this manner, we reserve the

right to limit your use of the Services to minimize these effects. Following our limitation of this use, we will notify you in writing of steps you may take to mitigate these effects. If you do not accept these steps, we reserve the right to impose permanent limitations on your use of the Services.

- c. We reserve the right to relocate the equipment used to provide the Service at any time. You will have no physical access to this equipment..

By using Skyxtech Media Company. you agree to the above terms of service.