

Trioptek Solutions, Inc. Terms of Service (TOS) And Hosted Services Agreement

Client:

Date:

The following terms of service ("Terms of Service"), the "TOS", or agreement is between Trioptek Solutions, Inc. ("TRIOPTTEK") and the Client ("Client") as designated by the order placed for products or services. These Terms of Service hereby incorporate by reference the [Trioptek Acceptable Use Policy](#), the "AUP", which is made a part of these Terms of Service and collectively referred to herein as the "Agreement."

WHEREAS, TRIOPTTEK is a Hosted Services Provider offering services related to the storage and transfer of data and other information over the Internet;

WHEREAS, Client seeks to use these services for its own purposes;

WHEREAS, the parties acknowledge that the Internet is neither owned nor controlled by any one entity; therefore, TRIOPTTEK can make no guarantee that any given party shall be able to access the server(s) or service(s) made available by TRIOPTTEK at any given time. TRIOPTTEK represents that it shall make every good faith effort to ensure that related services are available as widely as possible and with as little service interruption as possible;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows;

I. Financial Arrangements:

1. **SEE ADDENDUM A ATTACHED BELOW FOR SPECIFIC BILLING TERMS**
2. **Length of service**

Client agrees to an initial contractual term of service ("Term") starting on the date of the first charge for service(s) and proceeding on a monthly, quarterly or annual contractual basis as outlined in ADDENDUM A.

3. **Service start date**

The first payment plus setup charges, if any, shall be due in advance of any service provided. Service shall begin upon TRIOPTTEK's receipt of payment for such first Term of service or upon a mutually agreed upon other date. Billing will occur on the first day of each corresponding month according to the defined billing schedule in ADDENDUM A.

Renewal by Client

This agreement will automatically renew for successive Terms as outlined in ADDENDUM A, unless canceled in writing by Client at least 30 days prior to the end of Term renewal date. Renewal prices are subject to change. Renewal of services by Client indicates acceptance of any changes or revisions to this Agreement and price changes. Renewal fees will be automatically billed to your account.

Failure to pay

In the case of all hosted services delivered by TRIOPTTEK, the Client shall be required to remit payment to TRIOPTTEK by the invoice due date; however, before any remedial action may be taken by TRIOPTTEK for failure to pay, the Client shall have a 15-day grace period within which to cure the failure to pay, after which TRIOPTTEK may discontinue any and all hosted services on TRIOPTTEK servers and/or third-party partner servers. A \$25 late fee may be added to payments not received by the invoice due date. In the case of non-payment, TRIOPTTEK reserves the right to permanently delete all copies of Client's data and/or files without further notification.

4. Refund policy

- a. All Hosted Service Fees are not refundable under any circumstances.
- b. Setup fees are not refundable under any circumstances.
- c. Software Licensing fees are not refundable under any circumstances.
- d. Third-party service, product or other fees are not refundable under any circumstances.

II. Taxes:

TRIOPTTEK shall not be liable for the collection of any applicable taxes or other fees to be paid in accordance with or related to purchases made from or by the Client utilizing services hosted by or on TRIOPTTEK servers or any related third-party partner servers. Client agrees to take full responsibility for all taxes and fees of any nature associated with such products sold or purchased.

III. Trademarks & Copyrights:

Client warrants that it has the right to use any applicable trademarks or copyrighted material used in connection with any and all services hosted on TRIOPTTEK servers or third-party partner servers.

IV. Age:

Client certifies that he or she is of full legal age to enter into this agreement.

V. Acceptable Use Policies (AUP):

Client agrees to all terms as outlined in this agreement plus any additional terms in the TRIOPTTEK Acceptable Use Policy (AUP) as made available on the Trioptek website: [Trioptek AUP](#).

VI. Termination:

1. This Agreement may be terminated by either party, without cause, by giving the other party 30 days written notice. HOWEVER, such termination will NOT nullify contract term and full payment of contract term is required by the Client unless prior authorization is given by TRIOPTTEK. Written notice may be by postal, email or fax transmission. TRIOPTTEK reserves the right to verify all cancellations before terminating service. Notwithstanding the above, TRIOPTTEK may terminate service under this Agreement at any time, without penalty, if the Client fails to comply with any of the terms of this Agreement. Termination of this contract by TRIOPTTEK does not forfeit contract term and full payment of contract term by Client is required.
2. Termination for any violation of this agreement shall be immediate. TRIOPTTEK may, at its discretion, cancel or suspend service *immediately* should it believe Client has violated or is about to violate any part of this agreement or Acceptable Use Policy (AUP) located at [Trioptek AUP](#) or should the Client engage in any illegal activity while using TRIOPTTEK services. Termination of this contract by TRIOPTTEK does not forfeit contract term and full payment of contract term by Client is required.
3. Client will be held liable for any related fees, fines or penalties incurred relating to activities that violate the terms outlined in this agreement or the [Trioptek AUP](#) or incur additional charges for Trioptek such as the distribution of Unsolicited Commercial E-Mail (SPAM) or virus infected materials or any other prohibited actions outlined in the [Trioptek AUP](#).
4. **Notice of cancellation**
Written notice of cancellation may be by postal mail, email or fax transmission. Upon cancellation, Client may be liable for related fees of any licensed software or third-party service fees in conjunction with hosted services.

VII. Limited Liability:

TRIOPTTEK SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, PROXIMATE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE RESULTING FROM THE USE OF THE PRODUCTS AND SERVICES OFFERED BY TRIOPTTEK TO THE CLIENT OR ANY THIRD PARTIES OR ANY FAILURE OF THE PRODUCTS AND SERVICES OR ANY LOSS OF DATA OR CORRUPTION OF DATA, INCLUDING LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS, NETWORK FAILURE OR ERROR, RECLAMATION OF

SERVERS BY TRIOPTTEK, FAILURE OF SERVER OR SERVER HARDWARE, THE RELOADING OF AN OPERATING SYSTEM OR OTHER SOFTWARE ON A SERVER OR THE NEGLIGENCE OF TRIOPTTEK OR ANY RELATED THIRD PARTIES. CLIENT IS SOLELY RESPONSIBLE FOR SAFEGUARDING, BACKING UP, ARCHIVING AND MAINTAINING ALL DATA OWNED, CONTROLLED OR TRANSMITTED BY CLIENT TO AND FROM ANY PRODUCTS OR SERVICES PROVIDED BY TRIOPTTEK THAT RESIDES ON THE TRIOPTTEK NETWORK OR ANY SERVER OWNED, LEASED OR OPERATED BY TRIOPTTEK.

IN NO EVENT SHALL TRIOPTTEK'S AGGREGATE LIABILITY FOR ANY CLAIM UNDER THIS AGREEMENT EXCEED THE AGGREGATE DOLLAR AMOUNT PAID BY CLIENT TO TRIOPTTEK IN A SINGLE MONTHLY BILLING CYCLE NOT TO EXCEED TWO HUNDRED DOLLARS (\$200).

TRIOPTTEK PROVIDES ALL PRODUCTS AND SERVICES "AS IS," WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESSED OR IMPLIED.

CLIENT SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE PRODUCTS AND SERVICES AND TRIOPTTEK SHALL HAVE NO LIABILITY THEREFORE.

NO CLAIM MAY BE ASSERTED BY CLIENT AGAINST TRIOPTTEK MORE THAN THREE (3) MONTHS FOLLOWING THE DATE OF THE EVENT THAT UNDERLIES ANY SUCH CLAIM.

IN THE RARE OCCURRENCE OF A 'SIGNIFICANT DOWNTIME EVENT', AS DEFINED BY TRIOPTTEK, TRIOPTTEK MAY AT ITS DISCRETION ELECT TO ISSUE A SERVICE CREDIT TO THE CLIENT OF A VALUE DETERMINED SOLELY BY TRIOPTTEK. CLIENT ACKNOWLEDGES AND AGREES THAT THE RECEIPT OF A SERVICE CREDIT CONSTITUTES CLIENT'S SOLE AND EXCLUSIVE REMEDY AND TRIOPTTEK'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY FAILURE OF THE TRIOPTTEK NETWORK, TRIOPTTEK SERVER OR SERVER HARDWARE, DATA LOSS, OR THE FAILURE BY TRIOPTTEK TO PROVIDE CLIENT WITH THE PRODUCTS AND SERVICES PURCHASED BY CLIENT IN ACCORDANCE WITH THIS AGREEMENT.

TRIOPTTEK WILL EXERCISE NO CONTROL WHATSOEVER OVER THE CONTENT OF THE INFORMATION PASSING THROUGH THE TRIOPTTEK NETWORK EXCEPT FOR WHAT IS NOTED IN SECTION V AND VIII OF THIS AGREEMENT, RELATING TO ACCEPTABLE USE POLICIES AND LAWFUL PURPOSE AND EXCEPT FOR NETWORK TRAFFIC THAT IS IDENTIFIED AS POTENTIALLY HARMFUL TO THE TRIOPTTEK NETWORK.

TRIOPTTEK DOES NOT REPRESENT GUARANTEES OF SPEED OR AVAILABILITY OF END-TO-END NETWORK CONNECTIONS.

VIII. Lawful Purpose:

Client may only use TRIOPTTEK Services and/or related Servers for lawful purposes. Transmission or storage of any material in violation of any Federal, State or Local regulation is prohibited. This includes, but is not limited to copyrighted material, material legally judged to be threatening or obscene, material containing slander or libel, or material protected by trade secrets or any material that violates the [Trioptek AUP](#).

IX. Indemnification:

Client agrees that it shall defend, indemnify, save and hold TRIOPTTEK and any of TRIOPTTEK's third-party partners, harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorneys' fees asserted against TRIOPTTEK, its agents, its customers, servants, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by Client, its agents, employees or assignees. Client agrees to defend, indemnify and hold harmless TRIOPTTEK against liabilities arising out of any of the following:

- i. any injury to person or property caused by any products sold or otherwise distributed in connection with TRIOPTTEK's services;
- ii. any material supplied by Client infringing or allegedly infringing on the proprietary rights of a third party;
- iii. any material supplied by Client legally judged to be threatening or obscene, containing slander or libel, or protected by trade secrets;
- iv. copyright infringement; and
- v. any defective product which Client sold utilizing services hosted or offered by TRIOPTTEK.

X. Domain Name Ownership, Disputes, and Use

Any domain name registered by TRIOPTTEK on behalf of the Client is the property of the Client once Client has paid TRIOPTTEK all registration fees plus applicable expenses, and/or service charges, if any. TRIOPTTEK claims no ownership over Client domain names. At TRIOPTTEK'S discretion, TRIOPTTEK will either arrange for domain name billing to be sent directly by the registrar or agent thereof to the Client or TRIOPTTEK will directly bill the Client for these registration fees plus applicable expenses, and/or service charges, if any. Client agrees that TRIOPTTEK may be presented with information that Client's domain name possibly violates the trademark rights or other intellectual property rights of a trademark or other intellectual property rights owner. In case of such action, Client agrees to the following:

- i. Client agrees to hold TRIOPTTEK harmless of any action taken by such owner regardless of the outcome of such dispute and regardless of whether Domain Name Service hosting for Client's domain is hosted at or continued to be hosted at TRIOPTTEK.
- ii. Client agrees that TRIOPTTEK has the right to discontinue name service in the event of such dispute over a Client's domain name.
- iii. Client agrees that should TRIOPTTEK discontinue name service for Client's domain upon notification of such dispute that TRIOPTTEK will not be liable for any loss of business, interruption of business, loss of Client's domain name, or any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), or otherwise, even if TRIOPTTEK has been advised of the possibility of such damages.
- iv. In no event shall TRIOPTTEK's maximum liability exceed the cost of the domain name registration, not to exceed twenty (\$20.00) dollars.

Client agrees that a TRIOPTTEK contact person shall be named as the "technical or zone contact" for any domains hosted by TRIOPTTEK whether on TRIOPTTEK servers or third-party partner servers. Client agrees that TRIOPTTEK may create and use network resources with the Client's domain name for administrative, testing, and network infrastructure enhancement purposes.

XI. Contract Revisions:

Revisions to this Contract will be considered agreed to by the Client on renewal of TRIOPTTEK Services as specified in Section I. Financial Arrangements.

By signing below, Client agrees to abide by all rules and restrictions outlined in this agreement.

Signature – Authorized Agent – Customer

Date

Print Name – Authorized Agent – Customer

Title

This Agreement and [Trioptek Acceptable Use Policy](#) constitute the entire understanding of the parties. Any changes or modifications to this Contract are agreed to by the parties upon renewal of services.

This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

ADDENDUM A

SERVICE DETAILS AND BILLING TERMS

Service Type:
Service Cost(s):
Contract Term:
Billing Term:
Billing Type:
Service Details: