

# ServerPoint Terms of Service

The following Terms of Service (“TOS” or “Agreement”) apply to all services provided by A+ Hosting Inc. DBA ServerPoint.com (“ServerPoint”, we, us, our) to you (“Customer”). By purchasing services from us you agree to these terms of service.

**PLEASE READ THIS AGREEMENT CAREFULLY.**

**BY SIGNING UP FOR SERVICES, A CONTRACT IS CREATED BETWEEN CUSTOMER AND SERVERPOINT. YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING ACCEPTABLE USE POLICY, PRIVACY POLICY AND ANY ADDENDUM IF PROVIDED. YOUR USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.**

## 1. APPLICATION OF TERMS

1.1. These terms apply to all Services provided by ServerPoint to you during the Term. Certain provisions of this TOS may not apply to you based on your Order.

1.2. These terms, together with any Order(s), AUP and Privacy Policy represent the entire agreement relating to the Services and supersede any agreements previously entered into between you and ServerPoint.

1.3. ServerPoint may alter this TOS at any time without notification to you. However, the current TOS is always available on ServerPoint's website. Your sole remedy in the event that you do not agree to those amendments is to terminate your services, as described in paragraph 6, and based on the existing term and addendum. Only a ServerPoint officer may alter this TOS. No agent of, or person employed by or under contract with, ServerPoint has any authority to alter this TOS in any way. No oral explanation or oral information given by any party shall alter the interpretation of this TOS.

1.4. In addition to this TOS, all domain name registrations are subject to the terms and conditions of any registrar ServerPoint may use to fulfill the Order and the rules and regulations of the relevant registrar. As a condition of this TOS, you agree to be bound by the rules and regulations and dispute resolution policies applicable to each domain name applied for on your behalf. Details of these terms and conditions are available here:

ICANN Policy:

[www.icann.org/en/registrars/registrar-rights-responsibilities-en.htm](http://www.icann.org/en/registrars/registrar-rights-responsibilities-en.htm)

TuCows Domain Registration Agreement:

<http://opensrs.com/docs/contracts/exhibita.htm>

## 2. GENERAL TERMS AND CONDITIONS

2.1. You will conform to the standards and acceptable use policies of ServerPoint, as set out in our AUP, which is available on our website.

2.2. You are responsible for obtaining any licenses or permissions from public authorities that are required to upload the contents of your site or the web activity undertaken by you.

2.3. Your personal information is treated in accordance with our Privacy Policy, which is available on our website.

2.4. You will receive a password to be used to log into your Client Portal and/or server. You are solely responsible for all passwords, and you shall keep all passwords confidential and take security measures to prevent any unauthorized person from gaining access to your passwords.

2.5. ServerPoint's Service Level Agreement (SLA) sets out the hosting performance you can expect from us. The SLA is your sole and exclusive remedy for our failure to provide the Services to you. The SLA is explained in Section F below.

2.6. You have no ownership of, or proprietary rights in, any Equipment.

2.7. If necessary, we will provide an IP address to you. You will have no ownership of this IP address. It may only be used by you while using the Services, and may not be transferred. Upon Termination of this TOS, or a particular Service, your right to use an IP address will end. IP addresses are recycled.

2.8. The Services are provided to you as configured for our standard customer. You bear ultimate responsibility to ensure that the Services are configured to meet your operational, privacy and security needs. Your hardware, software and any other items you deem necessary to use the Services must be compatible with the Services. We are not obligated to modify the Services to accommodate your use. You may not terminate an Order based on your inability to use the Services because such a use is incompatible with them.

2.9. The Services are provided on as is basis. The hardware configurations may vary across data centers and may result in different performance. ServerPoint may replace your host server hardware, or modify certain software configurations when deemed necessary.

2.10. The proprietary and third-party software we provide for you to use as part of our service are provided on as is basis and you bear all responsibility for using it.

### **3. ORDERS**

3.1. Each Order for Services by you shall be deemed to be an offer by you to buy the Services from ServerPoint subject to this TOS. No Order shall be deemed to be accepted by ServerPoint until we provision your service. The date on which we provide notice to you that the service is provisioned is the Effective Date of this contract. The Initial Term of the Services is set out on your Order (Initial Term). Upon the expiration of the Initial Term, the Term would renew for a period equal to the original period requested or for a term required by the particular product.

3.2. You must be over the age of 18 at the time you place your Order.

3.3. All Orders will be reviewed by us to determine if they meet our financial, security and other reasonable criteria (Fraud Screen). You may receive notice that your Order has been rejected because it fails to pass our Fraud Screen. Unless otherwise specified, we are unable to provide additional information about the reasons for a particular Order failure to pass the Fraud Screen. Orders that fail our Fraud Screen will not be accepted and Service will not be provided.

3.4. ServerPoint is under no obligation to deliver any Services in addition to those identified in the Order.

3.5. You shall provide to ServerPoint, at your cost, any information, resources or facilities reasonably requested by ServerPoint for the delivery of the Services and, where necessary, ensure that your employees, contractors and other suppliers cooperate fully and promptly with ServerPoint.

3.6. Any instructions supplied by you to ServerPoint must be complete, accurate and clearly legible. ServerPoint reserves the right to charge for any costs and any additional work incurred by ServerPoint due to any failure by you to comply with this provision and shall not be liable for any errors caused by such failure.

## **4. OWNERSHIP OF YOUR ACCOUNT**

4.1. Your contact information is set out in the Client Portal. It is the Customer's responsibility to keep this information updated at all times.

4.2. If you, on behalf of another person or entity, ordered the Service, you warrant that you will administer the Service in good faith, and indemnify us against all losses and liabilities sustained by us should you administer the service in ways that are adverse to End User and result in any claim against us.

4.3. For avoidance of doubt, the individual or entity set out in the Client Portal is considered by us to be the owner of the account and all associated services, except Third party services purchased through ServerPoint, that are subject to additional terms and conditions. The individual or entity paying for the Services is not considered to be the owner. It is your obligation to ensure that you correctly indicate ownership of your account. If there is a dispute about ownership, the account will be locked until the parties to the dispute agree on a resolution, or until the matter is resolved judicially.

## **5. PAYMENT**

5.1. You are responsible for the Fees set out on the Order, and in the currency specified on the Order. You are also responsible for the fees associated to any extra feature added to the service or overuse.

5.2. Invoices are due immediately upon receipt. ServerPoint reserves the right to suspend the Services until payment is made.

5.3. All fees listed on our website are net of applicable taxes. You are responsible for all taxes and fees levied on the Services.

5.4. Our obligation to provide the Services is contingent on your payment of the Fees by the Due Date. It is your responsibility to ensure that we receive payment of the Fees. Should the Services be suspended, for any reason, Fees will continue to accrue. Setup fees and domain name registration charges are not refundable for any reason.

5.4.1. We often offer special promotions (Special Promotions). These promotions have specific terms, and generally do not apply to current customers. They do not apply to Renewal Terms except when expressly stated in the special promotion terms.

5.5. Our Services are provided on the basis of the Initial Term specified on your Order. All other Services shall renew for the specified period (Renewal Term) or Services are terminated as provided herein. Any such termination or cancellation will be subject to the payment of any outstanding charges and must comply with any contract term specified in the contract and/or addendum (if provided).

5.6. Your credit card is automatically charged for a Renewal Term on the expiration date of the Term for Service.

In case an automatic renewal charge fails and you fail to renew or terminate the service, we will make additional attempts to charge your credit card(s).

5.7. We are not responsible for your data or domain name if Services are terminated because your credit card on file have expired or is no longer valid for any reason.

5.8. We are pleased to provide you billing information on your services in your Client Portal.

5.9. If you believe there is an error on your bill, you must contact us in writing. We each agree to work together in good faith to resolve any billing disputes. If we find that your claim is valid, we agree to credit the account that is the subject of the dispute on your next bill. If you contact your credit card company, prior to notifying us of the dispute, and initiate a "chargeback" based on this dispute, we will charge you a chargeback and administrative fee. This fee compensates us for the investigation your credit card issuer requires us to conduct in order to demonstrate our right to payment. All of your Services may be suspended during billing disputes. To reactivate your Services, you must pay the administrative fee along with the reactivation fee. ServerPoint, however, may decide to not accept the same method of payment.

5.10. Money Back Guarantee

Our money back guarantee ensures peace of mind that our Services will meet the expectations set out in this agreement. Cancellation and Refund requests should be requested from authorized email address, no later than 30 days from the Effective Date. The following conditions apply to our Money Back guarantee:

(a) It applies only to individual Services in an Order. It does not apply to previously ordered Services;

(b) Setup fees and domain name fees are not refundable and may be due upon cancellation even if waived initially as part of a Special Promotion;

(c) Our Money Back guarantee covers Shared Hosting plans only. Other services, Third Party Services or features incorporated into the Services, Domain names or Certificates are not covered by our Money Back guarantee;

(d) The Money Back Guarantee does not apply to Renewal fees;

(e) The Money Back Guarantee is your sole and exclusive remedy should our Services fail to meet the expectations set out in this paragraph.

#### 5.11. ServerPoint Credit and ServerPoint Bucks

We may return part of a pre-paid amount as Credit. Credit amounts may only be used for future purchases and/or renewals of ServerPoint services.

ServerPoint Bucks amounts may only be used for future purchases and/or renewals of ServerPoint Services. No refunds will be provided and they will expire the moment the service or account is suspended or cancelled.

5.12. Our SLA as explained in Section F in these TOS sets out your rights in case of disruption of the Services. Should the Services be disrupted, you may request a Credit by contacting our customer service representatives. This Credit is our only obligation, and your only remedy, in the case of a disruption of the Services.

5.13. If you do not re-register your domain name(s), ServerPoint may choose to register the domain name. At that time the title in, and ownership of, this domain name will vest in ServerPoint. ServerPoint may sell this domain name without restriction as if the full legal and beneficial owner. Unpaid domain names may become the property of ServerPoint.

5.14. Unless stated otherwise, \$ refers to USD. All future amounts payable by you shall be charged in the same currency as your initial order.

## 6. TERMINATION OR CANCELLATION

### 6.1. Cancellation

ServerPoint is not able to schedule cancellation requests. Valid proof of account ownership will be required to terminate an account or service.

The initial term of this TOS or Agreement shall be as set forth in the initial order or addendum. The Initial Term shall begin upon commencement of the Services to Customer. After the Initial Term, this Agreement shall automatically renew. **ADDITIONALLY, AFTER THE INITIAL**

**TERM, YOU ACKNOWLEDGE, AGREE AND AUTHORIZE SERVERPOINT TO AUTOMATICALLY BILL AND/OR CHARGE YOUR CREDIT CARD OR BANK ACCOUNT FOR SUCCESSIVE TERMS OF EQUAL LENGTH AS THE INITIAL TERM, UNLESS TERMINATED OR CANCELLED BY EITHER PARTY AS PROVIDED IN THIS SECTION. IF AN ADDENDUM WAS INCLUDED, THE OTHER PARTY WILL BE BIND AND SHOULD COMPLY WITH ALL THE REQUIREMENTS BEFORE CANCELLATION.**

6.1.1. We reserve the right to terminate this TOS upon written notice if the other party materially breaches any of these terms and fails to correct the breach within 7 days following the other party's written notice, or immediately if the breach is incapable of cure. Other party will be responsible to comply with the addendum if provided.

#### 6.2. Cancellation by ServerPoint

6.2.1. ServerPoint may terminate this TOS if (i) you fail to pay any sums due to ServerPoint as they fall due; (ii) in ServerPoint's reasonable opinion, you do not have sufficient technical expertise to use the Services without excessive ongoing technical support; (iii) we determine in good faith that this service has become impractical or unfeasible for any technical, legal, regulatory or other reason; or (iv) you violate this TOS or any agreement incorporated by reference.

6.2.2. We may terminate a particular Order, or aspect of the Services, if a Third Party ceases to make components of them available to us, or if providing them to you becomes cost prohibitive.

#### 6.3. Cancellation by you

6.3.1. You may terminate the Services through the Client Portal or by contacting our customer service staff by email for instructions on how to cancel a specific service or account via Client Portal. If you fail to submit cancellation via Client Portal, the Services will not be Terminated, and Fees will still be charged. You must follow proper cancellation procedures in order to Terminate each Service. **IF AN ADDENDUM WAS INCLUDED, THE OTHER PARTY WILL BE BIND AND SHOULD COMPLY WITH ALL THE REQUIREMENTS BEFORE CANCELLATION.**

6.3.2. Once you follow the proper steps required to request the Service or account cancellation, we will process it and issue a refund, if you are entitled to it. Refunds are issued through the same payment method that was originally used to purchase the Services.

ServerPoint is not responsible for delays to refunds caused by processing institutions or expiration of the original payment method. All refunds are subject to administrative fees.

6.4. You may request cancellation of any Service at any time. Depending on the life stage of your Service, different cancellation fees may apply. Cancellation fees will be calculated during the cancellation process of the particular Service. In order to avoid renewal charges and late cancellation fees, cancellation must be requested at least 30 days before renewal term date. Cancellation of an Active account will result in the Termination of any additional Services associated with that account.

6.5. You acknowledge and agree that your domain name registration is subject to suspension, cancellation, transfer or modification pursuant to the terms of any rules or policies applicable to your domain name registration, including, but not limited to: (i) the UDRP; (ii) any ICANN adopted policy; (iii) any registrar (including ServerPoint) or registry administrator procedures; or (iv) any other ccTLD registry administrator procedures.

6.6. Upon cancellation of the Service, ServerPoint shall be entitled immediately to block your Service and to remove all data located on it. ServerPoint is entitled to post a public notice stating that your service has been suspended. IP space and backup space are recycled. It is your obligation to ensure that you arrange to transfer anything you need from the Services prior to cancellation. We have no obligation to forward e-mail following cancellation. IF AN ADDENDUM WAS INCLUDED, THE OTHER PARTY WILL BE BIND AND SHOULD COMPLY WITH ALL THE REQUIREMENTS BEFORE CANCELLATION.

## **7. TECHNICAL SUPPORT**

Our technical support is provided via our ticket system. Your initial request for technical support must originate there. Technical support is provided on an as is, as available basis. If your request for technical support exceeds that of similarly situated customers, or is based on your lack of sophistication, we may charge you additional support fees. We will inform you, and receive your consent, prior to charging you for technical support. If you request technical support, you agree that we may have full access to your equipment, account, personal data and any and all items accessible to us based on your request. While we will use reasonable efforts to provide technical support to you, all support is provided as is, and is subject to the disclaimers of warranties and limitation of liability set out herein. We retain the right to refuse to provide technical support to you if your use of technical support exceeds that of similarly



situated customers, if you are verbally abusive to our employees or contractors and, but not limited to, refusal to provide necessary information required to provide technical support.

It is your obligation to perform and store a backup of your data prior to requesting technical support and agreeing to any technical interference or operation provided by ServerPoint. In the event that you are not satisfied with the outcome of any technical action, it shall be your obligation to restore your files and data from your own backup.

## **8. INTELLECTUAL PROPERTY RIGHTS AND OTHER CONSENTS**

8.1. ServerPoint retains ownership of all intellectual property rights in the Services. ServerPoint grants to you a limited license to the Services to access and use them. All trademarks, product names and company names or logos used by ServerPoint are ServerPoint property or the property of their respective owners. No permission is given by ServerPoint to you or an affiliate to use any such trademarks, product names, company names, logos or titles, and you acknowledge that such use is an infringement of the owner's rights.

8.2. If we have not provided a license for you to use software as part of the Services, you agree to procure appropriate licenses to use all "Required Licenses." "Required Licenses" means any licenses, consents or approvals required to use software, hardware and other items installed on the Equipment, or whose use is facilitated by the Service. You agree to provide us with copies of the Required Licenses promptly following our written request.

8.3. You are solely responsible for obtaining all intellectual property rights in the intellectual property of others (Objects), including, but not limited to, clearances and/or other consents and authorizations necessary to use the names, marks or other materials which are used by you in, or transmitted via, the Service. On becoming aware of any dispute between you and any other individual or organization regarding the Objects, ServerPoint reserves the right, at its sole discretion and without notice or liability to you, to cease any further use of such Objects including, without limitation, deleting or suspending them from its computer systems and/or to make appropriate representations or provide information to any relevant authority or interested party.

8.4. Unless otherwise set out in this TOS, you own all right, title and interest to the information you place on our servers pursuant to the Services. If you submit feedback to us in the form of

trouble tickets or in another similar fashion, we shall have the right to use that information to improve our business processes. You have no right to any intellectual property that is based on an improvement to our business based on this feedback information.

## **9. REPRESENTATIONS AND WARRANTIES**

9.1. You represent and warrant that (i) you have the experience and knowledge necessary to use the Services; (ii) you and your End Users understand and appreciate the risks inherent to you, your business and your person that come from accessing the Internet; (iii) you have sufficient knowledge about administering, designing and operating the functions facilitated by the Services necessary to take advantage of the Services; (iv) you will not violate any applicable laws and/or regulations in your use of the Services; (v) you own all intellectual property rights in, or have a license to use, any information you provide to us necessary for us to perform the Services, or to any information transmitted by us through the Services; (vi) you will make backup copies of all information in a location independent of ours, and will not use our Backup Services as your sole backup.

9.2. WE MAKE NO WARRANTIES, AND ANY IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED. THE SERVICE(S) ARE PROVIDED AS-IS. YOUR USE OF THE SERVICE(S) IS AT YOUR OWN RISK. WE DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE(S) WILL MEET ANY OR ALL OF YOUR EXPECTATIONS; WILL OPERATE IN ALL OF THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY YOU; OR THAT THE OPERATION OF THE SERVICE(S) WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. NO EMPLOYEE OR AGENT IS AUTHORIZED TO MAKE ANY WARRANTY ON OUR BEHALF.

## **10. LIMITATION OF LIABILITY**

10.1. YOU AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU WILL NOT UNDER ANY CIRCUMSTANCES INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, HOLD US OR OUR LICENSORS, AGENTS, EMPLOYEES, OFFICERS AND/OR THIRD PARTY VENDORS LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL,

CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, COST SAVINGS, REVENUE, BUSINESS, DATA OR USE, OR ANY OTHER PECUNIARY LOSS BY YOU OR ANY OTHER THIRD PARTY. YOU AGREE THAT THE FOREGOING LIMITATIONS APPLY WHETHER IN AN ACTION IN CONTRACT OR TORT OR ANY OTHER LEGAL THEORY AND APPLY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL WE BE LIABLE TO YOU IN THE AGGREGATE WITH RESPECT TO ANY AND ALL BREACHES, DEFAULTS, OR CLAIMS OF LIABILITY UNDER THIS TOS OR UNDER ANY OTHER DOCUMENT FOR AN AMOUNT GREATER THAN THE FEES ACTUALLY PAID BY YOU TO US DURING THE 3 MONTH PERIOD PRECEDING A CLAIM GIVING RISE TO SUCH LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. YOU AGREE THAT IN THOSE JURISDICTIONS, OUR LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

## **11. INDEMNITY**

11.1. We shall indemnify and hold you harmless from, and at our own expense agree to defend, or at our option to settle, any claim, suit or proceeding brought or threatened against you so far as it is based on a claim that the Services infringe any issued U.S. patent or registered copyright. This indemnification provision is expressly limited to aspects of the Services which are fully owned by us. It does not extend to products or services provided by third parties even if incorporated into the Services. This paragraph will be conditioned on your notifying us promptly in writing of the claim and giving us full authority, information, and assistance for the defense and settlement of that claim. You shall have the right to participate in the defense of the claim at your expense. If such claim has occurred, or in our opinion is likely to occur, you agree to permit us, at our option and expense, either to: (i) procure for you the right to continue using the Services; (ii) replace an individual component of the Services with a product or service performing the same or similar function as the infringing aspect of the Services, or modify the same so that it becomes non-infringing; or (iii) if neither of the foregoing alternatives is reasonably available, immediately terminate our obligations (and your rights) under this TOS with regard to such Service. This shall be your only remedy, and our only obligation to you, should a third party allege that the Services infringe any issued U.S. patent or registered copyright.

11.2. You agree to indemnify, defend and hold ServerPoint harmless, our parent, subsidiary and affiliated companies, third party service providers and each of their respective officers, directors, employees, shareholders and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorneys' fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to: (i) your use of the Services; (ii) any violation by you of any of our policies; (iii) any breach of any of your representations, warranties or covenants contained in this TOS; and/or (iv) any acts or omissions by you. The terms of this section shall survive any termination of this TOS. For the purpose of this paragraph only, the term "you" as set out in subparagraphs (i) through (iv) includes you, End Users, visitors to your website, and users of your products or services, the use of which is facilitated by us.

## **12. CERTAIN INFORMATION**

12.1. Both you and ServerPoint undertake not to disclose to a third party any confidential information which you or ServerPoint receive relating to the contents or performance of this TOS, unless necessary for a party to perform their obligations under this TOS, the Services or the other's business in general, and shall procure that each of its directors and employees shall not do so, except with the prior consent in writing of the other, as required by law, or to the extent to which that information is publicly available or already known to the receiving party at the date of receipt, other than through any unauthorized disclosure by any person.

12.2. Without prejudice to Paragraph 12.1, ServerPoint shall be entitled to mention your name as a client of ServerPoint and the name(s) of products which ServerPoint provides to you with your prior consent.

12.3. If a law or regulation compels disclosure of information we have about you, we are required to respond. Unless notifying you is prohibited by the law, or a reasonable interpretation of that law, we will use reasonable efforts to contact the account owner as set out in our records. We are not required to respond to demands by you that we provide information about your account as part of your litigation. If we agree to do so, we will charge you administrative hourly fee for each hour we spend responding to your request. You will also be charged the fees we are charged by our attorneys in responding to your request.

## **13. NOTICES**

13.1. Any notice to be given by either party to the other may be sent by either support ticket, fax or recorded delivery to the address of the other party as appearing in this TOS or such other address as such party may from time to time have communicated to the other in writing or information on Client Portal. Notices of support tickets opened on behalf of ServerPoint are sent to you by email and shall be deemed received if message does not bounce back.

13.2. You are required to provide notices to us about the Services through the ticket system. We will provide notices to you using the information you provide at the time of the order or in our Client Portal. We have no responsibility for misdirected notices based on your failure to provide correct information.

13.3. Termination notices must be provided to us as set out in paragraph 6.

13.4. Legal Notices to us, which are effective only upon acknowledged receipt, shall be provided to us as follows:

ServerPoint.com Inc.

10620 S. Highlands Pkwy

Suite 110-491

Las Vegas, NV 89141

Facsimile: +1-702-442-1962

## **14. RESOLUTION OF DISPUTES AND CHOICE OF LAW**

14.1. Any dispute, controversy or claim arising under this TOS shall be resolved in accordance with the procedures set forth in this Section.

14.2. In the event of a dispute between the Parties relating to this TOS, each of the parties shall appoint a designated representative who has authority to settle the dispute and who is at the "C" level or above. This appointment will take place no later than 5 business days after the initial request for dispute resolution. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve the dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant

information made by one party to the other shall be honored. If the parties are unable to resolve issues related to a dispute within 30 days after a party's request is made, the dispute shall be submitted for arbitration. The arbitration shall take place in Las Vegas, Nevada pursuant to the commercial arbitration rules of the American Arbitration Association. The dispute shall be heard by a single arbitrator who has experience in the field of web hosting. The arbitrator shall not be entitled to award punitive damages or attorneys' fees.

## **15. DEFINITIONS**

"End User" is the individual or entity who uses, or to whom you provide, your services;

"Fees" means the charges to be paid by you for the provision of the Services as set out in any Order or (if not set out) those set out on ServerPoint's website;

"ICANN" means the Internet Corporation for Assigned Names and Numbers;

"Materials" means any information, reports, documents, software or other materials created by ServerPoint as part of the Services, including all methodologies, know-how and processes used to do so;

"Objects" means any names, marks or materials and any other information, documents or software which you supply to ServerPoint under this TOS;

"Order" means the order form, including electronic and online forms, or letter signed by you requesting Services;

"Server" means the computer server equipment operated by ServerPoint in connection with the provision of the Services;

"Service" or "Services" means any and all services provided by ServerPoint under this TOS and any other services requested by you which may be provided from time to time as set out on the portion of our website describing the individual Service (Product Pages);

"ServerPoint" means ServerPoint.com Inc;

"Space" means the area on the Server allocated to you by ServerPoint for use by you as a site on the Internet;

"TOS" means this TOS, including all documents incorporated by reference;

"Client Portal" means the part of the ServerPoint website from which you can manage your Services and to which you are given login credentials at the start of your Initial Term; and

"You" and "your" mean the person, firm or company who purchases Services from ServerPoint.

"Term" means the prepaid period during which you receive Services from ServerPoint;

"Initial Term" of the Services is set out on your Order;

"Renewal Term", all Services shall renew for the specified period (Renewal Term);

"Due Date" is the date when service will become due for payment.

## **16. MISCELLANEOUS**

16.1. If any provision of this TOS or part thereof shall be void for whatever reason, the offending words shall be deemed deleted, and the remaining provisions shall continue in full force and effect.

16.2. Your rights and obligations under this TOS are personal to you, and you shall not assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.

16.3. ServerPoint reserves the right to sub-contract any of the work required to fulfill the Services and to assign this TOS.

16.4. Except for the obligation to pay the Fees, 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, earthquake, labor disputes, shortages of supplies, riots, war, fire, epidemics, failures of telecommunication carriers, 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 such an occurrence shall notify the other party as soon as possible, but in no event later than 10 days from the beginning of the event.

16.5. Any delay or forbearance by either party in enforcing any provisions of this TOS or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.

16.6. Paragraph headings have been included in this TOS for convenience only and shall not be considered part of, or be used in interpreting, this TOS.

16.7. This TOS does not create any agency, partnership, joint venture, or franchise relationship. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

16.8 SURVIVAL. Paragraphs 2.5, 2.10, 5.12, 9.2, 10, 11, 12.1, 13, 14, 15, 16.1, 16.8, Section F: 1.9, 1.11 and 2 shall survive the termination of this TOS.

## **Section A – Starter Shared Hosting Services**

You may be bound by additional terms and conditions imposed by our licensors. These terms and conditions are also incorporated by reference. We are happy to provide you with these additional terms and conditions upon request.

### **1. Usage**

Starter Shared Hosting Services are for one user only. You may not resell or lease your Space or portions of your Space.

### **2. Free Domain Registration**

Only applies to Main Domain.

3. We have integrated certain services into your Starter plan as set out on the respective Product Page.

Backups are provided for internal purpose only. You are fully responsible to keep backup of all your files in your personal computer.

4. You agree that we have the sole right to decide what constitutes a violation of the Fair Use and what is the appropriate severity of any corrective action to be applied. Failure on your part to comply may result in warning, resource usage limitations, suspension or immediate account termination without refund upon our reasonable discretion. You understand and agree that in the event of violation, we may grant you a certain period of time to rectify the issue. If you take no action during this period, the decision becomes binding and final and we will be free to apply corrective actions at our sole discretion. You acknowledge that we can



immediately suspend and/or terminate each account that violates the Fair Use and will not be responsible for any data loss resulting from such termination of services.

## **Section B - Premium Hosting Service**

You may be bound by additional terms and conditions imposed by our licensors. These terms and conditions are also incorporated by reference. We are happy to provide you with these additional terms and conditions upon request.

### 1. Usage

Premium Shared Hosting Services are for one user only. You may not resell or lease your Space or portions of your Space.

### 2. Free Domain Registration

Only applies to Main Domain.

### 3. Add-on Domain Slot

You may choose host up to 25 websites/subdomains hosted in your Hosting Service.

Free Domain Registration Only applies to Main Domain.

### 4. Backup

While we will use reasonable efforts to provide Backups as outlined on our Product Page for the Premium plan, all backups are provided "As-Is," and are subject to the disclaimers of warranties and limitation of liability set out herein. In the event that you are not satisfied with the outcome of any backup, it shall be your obligation to restore your files and data from your own backup.

5. You agree that we have the sole right to decide what constitutes a violation of the Fair Use and what is the appropriate severity of any corrective action to be applied. Failure on your part to comply may result in warning, resource usage limitations, suspension or immediate account termination without refund upon our reasonable discretion. You understand and agree that in the event of violation, we may grant you a certain period of time to rectify the issue. If you take no action during this period, the decision becomes binding and final and we will be free to apply corrective actions at our sole discretion. You acknowledge that we can

immediately suspend and/or terminate each account that violates the Fair Use and will not be responsible for any data loss resulting from such termination of services.

## **Section C – Cloud Hosting Service**

You may be bound by additional terms and conditions imposed by our licensors. These terms and conditions are also incorporated by reference. We are happy to provide you with these additional terms and conditions upon request.

### **1. Usage**

Cloud Shared Hosting Services are for one user only. You may not resell or lease your Space or portions of your Space.

### **2. Free Domain Registration**

Only applies to Main Domain.

### **3. Backup**

While we will use reasonable efforts to provide Backups as outlined on our Product Page for the Cloud plan, all backups are provided “As-Is,” and are subject to the disclaimers of warranties and limitation of liability set out herein. In the event that you are not satisfied with the outcome of any backup, it shall be your obligation to restore your files and data from your own backup.

You agree that we have the sole right to decide what constitutes a violation of the Fair Use and what is the appropriate severity of any corrective action to be applied. Failure on your part to comply may result in warning, resource usage limitations, suspension or immediate service termination without refund upon our reasonable discretion. You understand and agree that in the event of violation, we may grant you a certain period of time to rectify the issue. If you take no action during this period, the decision becomes binding and final and we will be free to apply corrective actions at our sole discretion. You acknowledge that we can immediately suspend and/or terminate each services/account that violates the Fair Use and will not be responsible for any data loss resulting from such termination of services.

## **Section D - Cloud VPS Service**

### **1. Cloud VPS Description**

Our Cloud VPS Services are an infrastructure for the changing needs of our customers.

## 2. Our Responsibilities

*Sale of Bandwidth* - We agree to sell to you the amount of bandwidth specified in your Order.

*Connection to Our Network* – You have the right to connect to our network, using the Equipment, on a 24 x 7 basis, except as limited by this TOS.

*IP Address* - We will provide, at no cost to you, one primary IP addresses by default, which will be subject to change at any time. You have no ownership of the IP addresses provided to you.

*Access* - You will have no physical access to the Equipment. You will be provided administrative Secure Shell (SSH) access to your service. In order to use SSH access you need to enable it through your service WHM control panel.

*Use* – While the Equipment may appear to be dedicated solely to your use, its use will be shared with our other customers.

## 3. Your Responsibilities

Your use of the Equipment is not exclusive. You will take no actions to limit the use of the Equipment by our other customers or other entities in general. You will not alter, nor attempt to alter, mechanisms, including software, implemented by us to facilitate the sharing of a server. You understand that certain aspects of the Cloud VPS Service, designed to facilitate use by multiple parties, may affect your use and administration of the Equipment. You may not terminate this TOS based on the implementation of these features.

# Section E – Dedicated Servers

## 1. Dedicated Server

The particular services you choose to be provided by us are set out in your Order, described on the Product Pages, and referred to as the “Dedicated Service.” The Dedicated Product features, access speeds and other items you have initially selected are set out on your Sales Receipt.

## 2. Our Responsibilities

*Sale of Bandwidth* - We agree to sell to you the amount of bandwidth specified in your Order.

*Connection to Our Network* – You have the right to connect to our network, using the Equipment, on a 24 x 7 basis, limited by this TOS.

*Access* - You will have no physical access to the Equipment. You will have full administrative access to the Equipment.

### 3. Backup

You may add backup service to your dedicated server. The daily backup is created via a third party software and is provided on an “as is” and “as available” basis. It may be discontinued at any time, and may not always be available. You agree to hold ServerPoint harmless of any backup failures that result from failure of the backup software or any hardware failure that may result in a loss of backups.

In the event that you are not satisfied with the outcome of any Backup, it shall be your obligation to restore your files and data from your own backup.

### 4. Minimum Term

There is a 6 month minimum contract on dedicated servers with custom configurations, on servers with discounted pricing and on *Colossus* Enterprise Dedicated Servers and/or on any other special equipment requested.

## **Section F - Service Level Agreement SLA**

ServerPoint.com is highly committed to standards of quality and performance. We follow the best practices in the industry to ensure a high level of network and hardware uptime. This SLA is part of your contract with us. It sets out our rights and responsibilities for our failure to meet the criteria herein.

Credit is always applied toward the next invoice. If you are past due on any Fees or you have breached these TOS, we are not required to provide the Credit to you. You must request a Credit within 3 days of the event covered by the SLA via our ticket system. You will receive only one Credit per disruption. Credits may not be aggregated, are limited to one month's Fees over a 12-month period, may not be carried over from month-to-month and are not refundable or transferrable to another account or service.

This SLA is your sole and exclusive remedy for downtime, or any network, software, hardware or Equipment failure.

For more details about our SLA go to <http://www.serverpoint.com/en/about/sla.phtml>.

## Section G - Domain Name Registration

### 1. General

1.1. ServerPoint resells top-level domains (TLDs) – gTLDs (generic top level domains) and ccTLDs (country-specific top level domains). Your use of a domain name is governed by ServerPoint Terms of Service, the Registrant Agreement provided by the respective Registry, and ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP). The terms of the UDRP are available at <http://www.icann.org/udrp/udrp.htm>. A reference to the terms of the respective Registry may be found at <http://opensrs.com/docs/contracts/exhibita.htm>

1.2. ServerPoint does not warrant or guarantee that the domain name applied for in your Order will be registered in your name or is capable of being registered by you. You should not rely on the fact that you have submitted an Order to register a domain name until you have been notified by us that your requested domain name has been registered.

1.3. The registration of the domain name and its ongoing use are subject to the relevant naming authority's terms and conditions of use, and you are responsible for ensuring that you are aware of those terms and conditions. You waive any claims you may have against ServerPoint should a naming authority refuse to register a domain name. Registration and renewal Fees are non-refundable in any event. Renewal fees for expired domain names may vary depending on the Registrar of record.

1.4. Any dispute between you and any other individual or organization regarding a domain name must be resolved between the parties concerned. ServerPoint will take no part in any such dispute. ServerPoint reserves the right, on ServerPoint becoming aware of such a dispute, at ServerPoint's sole discretion to either suspend or cancel the domain name, and/or make appropriate representations to the relevant naming authority. You warrant and represent that to the best of your knowledge and belief, neither the registration of the domain name nor the manner in which it is directly or indirectly used by you and/or any affiliate directly or indirectly infringes the legal rights of a third party.

1.5. You are solely responsible for providing ServerPoint with accurate and up-to-date contact information, and ServerPoint shall not accept any responsibility for any cancellation or refusal to renew a domain name by the relevant naming authority due to any failure to provide such information. Any changes made by you to your details using the ServerPoint Client Portal

facility are your own responsibility. ServerPoint is not responsible for the renewals of any domain name registrations, except when stated otherwise as part of a special promotion, and you should make your own arrangements for reminding yourself when any name is due for renewal. As a courtesy to you, to avoid SPAM, the email address in your WHOIS record will be registered to our address. If you would like to modify this address, please contact us.

1.6. Where ServerPoint is acting as registrar, the ICANN-adopted consensus policies on transfer of sponsorship of registrations between registrars shall apply.

1.7. Terms of free domain registration:

We may offer you a free domain name registration during your Initial Term as part of some of the hosting services and special promotions we provide. You must satisfy the following criteria in order to take advantage of this offer:

1.7.1. You must order a hosting service that includes a Free Domain Name registration as described on the Product Page and prepaid for at least 1 year and customer is not a reseller. You must request the Free Domain Name when you first place your Order.

1.7.2. When your web hosting service renews, the applicable then-current pricing will be applied to your service.

1.7.3. The Free Domain Name must be your primary domain and must be associated with the initially ordered Hosting Service throughout the duration of your prepaid Term.

1.7.4. The Free Domain Name must be for one of these tld's: .com, .net, .org, .us, .biz, or .info.

1.7.5. If you cancel the hosting Services associated with the Free Domain Name, or the Services are terminated, you will be charged our then current Fee for the domain name. If you fail to pay for the Free Domain Name, your domain name will go into redemption. We may take ownership of that domain following redemption.

1.7.6. If you wish to transfer away from ServerPoint a domain that is subject to a promotion or product offer with free domain registration and renewal, you owe to ServerPoint domain registration fees for the minimum, full registration period of the domain.

1.7.7. Domain Pointers names must point to the service main directory.

1.7.8. We have no liability for domain names that are not registered by us and associated with your services/accounts.

#### 1.8. Information you are required to submit

As part of the registration process, you are required to provide certain information to us, and to promptly update this information as needed to keep it current, complete and accurate. This information will be used by ServerPoint in accordance with its Privacy Policy and this TOS. The information you must provide in connection with the domain name you are registering is set out on your Order and includes the following:

- (a) your name and postal address (or if different, that of the domain name holder); and
- (b) the domain name being registered.

You agree and acknowledge that when you renew your domain name registration, the type of information you are required to provide may change. If you do not wish to provide the new information, your registration will not be renewed.

The information you provide determines the ownership of the domain as set out in the terms and conditions of the domain name registrar. For non-expired domain names registered through ServerPoint this information can be changed at any time through a domain management facility in your Client Portal.

If you intend to sell use of a domain name to a third party, or to allow a third party to use it, you are still responsible for providing the contact information specified above. You accept liability for such a registration, and remain responsible for payment of the relevant Fees and performance of all other obligations under this TOS.

#### 1.9. Obligations relating to provided data

If you provide information about a third party, you hereby represent that you have (a) provided notice to that third party of the disclosure and use of that party's information as set forth in this TOS, and (b) that you have obtained that third party's express consent to the disclosure and use of that party's information as set forth in this TOS.

You acknowledge that willfully providing inaccurate information or willfully failing to update information promptly, or failure to respond for over 7 days to inquiries by ServerPoint concerning the accuracy of contact details associated with your registration will constitute a material breach of this TOS and will be sufficient basis for cancellation of your domain name registration.

#### 1.10. Disclosure and use of registration information

You agree and acknowledge that ServerPoint will make available domain name registration information you provide, or that ServerPoint otherwise maintains, to ICANN, to the registry administrator(s), and to other third parties as ICANN and applicable laws may require or permit.

ICANN may establish guidelines, limits and/or requirements that relate to the amount and type of information that ServerPoint may or must make available to the public or to private entities and the manner in which such information is made available. You agree to abide by these policies and may not terminate this TOS based on such a change.

You hereby consent to each of the disclosures set out in this TOS. You further consent to the use of the information you provide to us; and guidelines, limits and restrictions on disclosure of, information provided by you in connection with the registration of a domain name (including any updates to such information). This applies whether during or after the term of your registration of the domain name. You hereby irrevocably waive any and all claims and causes of action you may have arising from such disclosure or use of your domain name registration information by ServerPoint.

#### 1.11. Ownership of data

You agree and acknowledge that ServerPoint owns all database, compilation, collective and similar rights, title and interests worldwide in ServerPoint's domain name database, and all information and derivative works generated from the domain name database. You further agree and acknowledge that ServerPoint owns the following information for those registrations for which ServerPoint is the registrar: (a) the original creation date of the registration; (b) the expiration date of the registration; (c) the name, postal address, all email addresses, telephone number, and where available, fax number of the technical contact, administrative contact, zone contact and billing contact for the domain name registration; (d) any remarks concerning the registered domain name that appear or should appear in the WHOIS or similar database; and (e) any other information ServerPoint generates or obtains in connection with the provision of domain name registration services, other than the domain name being registered, the IP addresses of the primary nameserver and any secondary nameservers for the domain name, and the corresponding names of those nameservers.

## **2. Whois Privacy**

If set out in your Order, we will provide private domain name registration services to you (Whois Privacy). If we provide Whois Privacy to you, you agree:



2.1. That this Service is provided on a reasonable efforts basis. We are not responsible if your identity is mistakenly disclosed;

2.2. That you warrant that you have purchased this Service for a legitimate use, and not to evade any legal, tld, ICANN or other requirement imposed by law, or an Internet authority;

2.3. That you will provide us with accurate information, and that you will ensure that this information is updated immediately when it changes;

2.4. That you will indemnify and hold us harmless based on any claims made against us based on providing Whois Privacy to you;

2.5. That you will immediately respond to all notices we provide to you that are forwarded to us as a result of providing the Whois Privacy service to you; and

2.6. That we may terminate all Services provided to you should we determine, in our reasonable discretion, that you are abusing the Whois Privacy service, or you do not immediately respond to our inquiries or the notices we forward to you.

### **3. Domain Registrar Transfers**

3.1. You agree that you can change your registrar for an existing domain name only in accordance with the policy of the relevant registry. Only the "Domain Name Owner" (the entity listed as the registrant in the current domain name registration) of the domain name registration may initiate a request to transfer that domain name registration from another registrar to ServerPoint. You hereby represent that you have the full and complete authority as the holder of the domain name registration to initiate such a transfer, or that you have been given full and complete authority by the Domain Name Owner of the domain name registration to initiate such a transfer. ServerPoint, at its sole discretion, may require you to provide documentation that proves that the Domain Name Owner of the domain name initiated this transfer request.

The request to transfer a domain name registration from another registrar to ServerPoint may be denied where applicable for any of the following:

(a) time past after initial registration, after most recent transfer and after renewal of the domain name does not meet Registries' requirements;

(b) during the last 15 days prior to expiration of the domain;

(c) you have provided wrong or no EPP code or the special TAG attribute is not correctly set;

- (d) you do not have access to the administrative email address for the domain;
- (e) the domain name is in LOCKED status;
- (f) the domain is not with an extension that ServerPoint can register;
- (g) if there is a pending bankruptcy of the domain name holder;
- (h) there is a dispute over the identity of the domain name holder;
- (i) at the discretion of the then-current registrar;
- (j) by operation of law;
- (k) in accordance with circumstances described in the Domain Name Dispute Policy;

It is the responsibility of the Domain Name Owner to ensure that the request to transfer will not be denied for any of the above reasons prior to initiating and paying for the registrar transfer services. Fees are not refundable, but can be applied to subsequent transfer requests at ServerPoint's sole discretion.

3.2. Upon successful completion of the registrar transfer request, we shall immediately become the registrar of record. As per the terms of the respective Registry, your domain name registration term may be extended with up to 2 years either from the date your existing registration is set to expire or from the date the transfer is completed, provided that the total unexpired term of a registration does not exceed ten years.

## **Section H - Private SSL Certificates**

We are pleased to offer private SSL certificates to you, through Tucows and Global Sign, if set out on your Order (Private SSL Certificates). To use the Private SSL Certificates, you must be a current customer and:

1. Place the corresponding SSL certificate order, for services that do not include an SSL certificate.
2. Agree to the terms and conditions set by the respective Private SSL providers at their websites:

AlphaSSL:

[http://alphassl.com/repository/AlphaSSL\\_Subscriber\\_Agreement.pdf](http://alphassl.com/repository/AlphaSSL_Subscriber_Agreement.pdf)

GeoTrust (RapidSSL):

[http://www.rapidssl.com/resources/pdfs/GT\\_Relying\\_Party\\_Agmt%20\\_final.pdf](http://www.rapidssl.com/resources/pdfs/GT_Relying_Party_Agmt%20_final.pdf)

3. Have a dedicated IP address.

4. Agree that ServerPoint shall represent you before the SSL providers for the purpose of approving SSL certificate orders or renewals on your behalf. This may involve logging into the email account you have provided for SSL verification purposes and approving the SSL certificate.

5. Agree that if you do not complete the SSL confirmation process up to 5 business days after your initial SSL activation request, your SSL activation request will be canceled and no refund will be due.

6. Promotional SSL certificates

SSL certificates may be provided at a lower price as part of a special promotion for a Term set out on your order (the Promotional Term). Such certificates are available to use only as long as the SSL is installed under an IP address of the ServerPoint network. If you attempt to transfer away an SSL during its Promotional Term, the discount or other benefit provided by the special promotion will be removed, and your service will be re-billed as if it had been set up without the special promotion. If this results in additional fees, you will be charged for those fees.

## **Section I - Backup Services**

We provide Backup Services to certain Services on a reasonable efforts basis. Backup Services are provided as is and are subject to all warranty disclaimers and limitations of liability set out herein.

### **1. Backup Creation**

Although ServerPoint makes reasonable effort to make daily backup of its Shared Hosting Service, backup creation might fail due to various unforeseen hardware and software failures, for which ServerPoint bears no responsibility. Cloud VPS snapshots can be configured in the Client Portal.

### **2. Backup Copies stored**

We keep a limited number of backup copies of your account. Depending on the type of hosting and the type of Backup service you have subscribed for you may have access to only 1 copy or more.

In case of service transition from one service to another, old backup copies created as part of the previous service are deleted and new backups as part of the new service start to be created.

### 3. Backup Restore

We are pleased to provide you with Backup Restore services. Such services are not included in your Hosting Fees and can be ordered at an additional expense. Depending on the type of Backup Service, for which the customer subscribed, backup restore tools might be provided at customer's disposal free of charge.

#### 3.1. Restore from ServerPoint backups

ServerPoint acts in good faith to backup data on your Service daily. Data restore from ServerPoint copies is provided on an as is as available basis. If we do not have any backup copy of your data, we shall refund any prepaid fees for the backup restore service.

#### 3.2. Restore from custom Backup file

ServerPoint shall attempt to restore your data from a custom backup file as set out on your order for Backup restore services. We may refuse to restore your data, if in our reasonable opinion such restore will result in security risk or will alter the performance of our Server to the detriment of other customers. Such service is subject to hourly fees. Fees associated with restoring an service from customer Backup files are due immediately and are non-refundable.

## **Section J - Free Website Transfer Services**

ServerPoint provides free transfer of websites hosted with a different hosting provider to ServerPoint. The following terms apply to the free transfer:

1. Customer is eligible for a free website transfer if they have purchased Shared Hosting service for at least 1 year and customer is not a reseller.
2. Only one website will be transferred for free per customer. If customer wants more websites to be transferred, additional fees will apply.

3. The total size of the customer's account for transfer does not exceed 1GB of space. Each database associated with the account is not bigger than 200MB.
4. The customer should provide all needed login information for its previous hosting service, which includes but is not limited to: control panel login details, MySQL login details, database export tools location on previous host etc.
5. The customer should provide all additional assistance that may be needed during the transfer, which includes but is not limited to: contacting its previous host in case of technical problem on its side, etc.
6. If the previous host was using cPanel, hourly fee will be applied.
7. Domain transfer is not provided as part of the free website transfer service. If you wish to transfer your domain, you can initiate such process inside your Client Portal.
8. If additional reconfiguration is needed for the proper functioning of the website after transfer, ServerPoint will re-configure up to 1 application per transferred service. Additional fee for development work is applicable for re-configuring each of the transferred applications except the first one.
9. ServerPoint reserves the right to not complete the transfer if: the MySQL version of the previous host is different from the ServerPoint's MySQL version; if the website uses PHP version different from the ServerPoint's PHP version; if the website needs server settings that are different from the ServerPoint's server settings at the time of the transfer; if the server of the previous host experiences continuous time outs during the transfer process.
10. The transfer request should be placed in the corresponding ticketing category no more than 30 days after the receiving service on the ServerPoint server was initially ordered.

## **Section K - Unlimited Disk Space and Bandwidth**

Unlimited web space on any Shared Hosting plan applies to use of web pages only (html, php, etc.) All other files are considered as Premium storage, and allowing the storage of such files is at the discretion of ServerPoint. The purpose of an ServerPoint Shared Hosting Service is to host web sites. Using a hosting service primarily for online file storage or archiving electronic files is prohibited. To ensure fast & reliable service to all of our shared hosting clients, services that adversely affect server or network performance must correct

these issues or will be asked to upgrade to a virtual or dedicated server. In the event that you exceed the allocated space quota, ServerPoint will limit your file upload service and send you an email warning to the authorized email address on file. If you do not take action to comply with the overage warning and the terms and deadlines specified in the warning email, ServerPoint reserves the right to suspend your service or terminate this Agreement without liability to you.

Customers on any shared hosting plan will ensure that neither you nor any of your End Users makes excessive or wasteful use of the Server to ServerPoint's detriment or that of ServerPoint's other customers. The terms "excessive" and "wasteful" are defined by our experience with similarly situated customers. This means that your use of bandwidth may not exceed that of similarly situated customers. Unlimited bandwidth use applies to your use of web pages only (html, php, etc.), not for storage of movies, music files or any other files of a size far in excess of a standard HTML pages. If the contents of your Space regularly generate more server traffic than is deemed acceptable by ServerPoint, ServerPoint shall send you an email warning to the authorized email address. If you do not take corrective action or comply with an excessive traffic usage warning we have sent by email within the specified time frame, ServerPoint reserves the right to terminate this Agreement without liability to you.

Dedicated and Cloud Hosting Services have a set bandwidth allocation applicable to each Service, as set out on the Product Page. If in any calendar month you use bandwidth over that basic allocation, your service may be limited and an overage fee will be charged.

Unused bandwidth may not be carried over from month-to-month.

ServerPoint will monitor Customer's bandwidth and disk usage. ServerPoint, in its sole discretion, shall have the right to take any corrective action if Customer's bandwidth or disk usage exceeds the Agreed Usage or other improper storage or usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, removal or deletion of Customer's Web site, Customer Content, Customer's electronic mail services and/or other materials or termination of this Agreement, which actions

may be taken in ServerPoint's sole and absolute discretion. If ServerPoint takes any such corrective action under this section, Customer shall not be entitled to a refund or credit of any fees paid prior to such action. Customer will comply with all applicable laws, rules and regulations regarding Customer's Web site, Customer Content and/or Customer's electronic mail services and will each, including bandwidth, disk space and other resources only for lawful purposes.

## **Section L - Other Fees**

- a. If any check is returned for insufficient funds ServerPoint will impose a minimum processing charge of \$25.00.
- b. Wire/Bank transfers will be assessed a minimum charge of \$35.00.
- c. There may be a minimum charge of \$35.00 per credit card chargebacks.
- d. There may be a minimum charge of \$35.00 per paypal disputes.
- e. For special administrative work, ServerPoint will charge Customer \$45.00/hour as administrative fee.
- f. In the event an invoice remain unpaid past the due date:
  - i. For Shared Hosting services: (10) days after payment is due, ServerPoint will suspend Service. Service will be terminated (30) after payment became due and other services/account may be affected.
  - ii. For Cloud VPS hosting services: (10) days after payment is due, ServerPoint will suspend Service. Service will be terminated (20) after payment became due and other services/account may be affected.
  - iii. For Dedicated hosting services: (3) days after payment is due, ServerPoint will suspend Service. Service will be terminated (7) after payment became due and other services/account may be affected.
- g. ServerPoint will charge Customer a late fee of \$25.00 to activate a suspended services; in addition any amounts payable to ServerPoint not paid when due will

bear interest at the rate of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less.

- h. ServerPoint will charge Customer a termination fee of \$50.00 to activate a terminated service due to policy or lack of payment; in addition any amounts payable to ServerPoint not paid when due will bear interest at the rate of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less..
- i. There may be a minimum charge of \$100.00 to restore a service from one of our backups, if available.
- j. Backups will be deleted from our system once service is terminated or cancelled.

## **Section M - Disclaimer**

- ServerPoint is not responsible for any damages your business may suffer.
- ServerPoint denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by ServerPoint.
- The Customer will not use its network nor space provided by ServerPoint to violate any law. In the event Customer violates existing law, ServerPoint shall have the right to terminate all service set forth in this Agreement. In the event ServerPoint is informed by government authorities of inappropriate or illegal use of ServerPoint facilities or other networks accessed through ServerPoint, ServerPoint may terminate customer's Service.
- ServerPoint will cooperate fully with investigations of violation of systems or network security at other sites.



- ServerPoint will cooperate with law enforcement authorities in the investigation of possible criminal violations.
- Customers who violate systems and/or network security, may incur in criminal or civil liability.
- ServerPoint reserves the right to amend its policies at any time. You will be held responsible for the actions of your clients in the matter described on these Terms and conditions. Therefore, it is in your best interest to implement a similar or stricter Terms and conditions or otherwise called Acceptable Terms of use policy.

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ServerPoint.Com Representative Signature

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Customer Signature

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\_\_\_\_\_  
ServerPoint.Com Representative Name

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Customer Name

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