

Terms of Service ("TOS")

Customer agrees to the following TOS:

1. **Term and Termination:** Unless requesting Hourly Services (as defined in paragraph 4 below) or otherwise agreed to by the parties in writing, Customer agrees to a month-to-month contract term for services. The month-to-month contract for services is automatically renewed each month in perpetuity subject to written cancellation by the Customer. Please carefully review IWHU's cancellation policy set forth in Paragraph 9 below. IWHU may terminate this Agreement upon non-payment as set forth in paragraph 11 below. At its sole discretion, IWHU may terminate this Agreement if Customer violates any terms and conditions of IWHU's AUP.

2. **Monthly Service Fees:** Fees for service(s) ordered by the Customer shall begin on the date of the initial order and that date shall serve as the monthly anniversary date ("Anniversary Billing Date") for all future billings including one time fees, upgrades, additional services, cancellations and service credits. Fees are due in advance of the monthly service cycle and will be billed on the anniversary date of each month.

3. **Upgrade Fees:** Upgrades ordered on the Anniversary Billing Date will be billed for a full month service and will continue each month on the Anniversary Billing Date. Upgrades ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.

4. **Hourly Service Fees:** For any services offered by IWHU on an hourly basis ("Hourly Services"), Customer shall specify the period of time for which the Hourly Services are requested, or cancel at any time. The minimum period of time for which Hourly Services may be requested is one ("1") hour and Customer will be billed in full hourly increments, and no breakdown by minutes shall be permitted. Unless otherwise specifically stated in the LHA, Customers who request Hourly Services agree to all terms and conditions in IWHU's LHA, including but not limited to these TOS and the AUP. Customers will be billed for Hourly Services and receive any SLA credits, if applicable, on the Anniversary Billing Date (as set forth and defined in paragraph 2 above).

5. **Additional Service Fees:** Additional services, not including Hourly Services, ordered on the Anniversary Billing Date will be billed for the full month service and will continue each month on the Anniversary Billing Date. Additional services ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.

6. **One Time Fees:** One time fees, such as setup fees, administrative fees and late fees are due and payable at the time they are incurred, and/or agreed upon in writing or via ticket with IWHU's approval. One time fees, such as bandwidth overages and IWHU overages are due and payable upon an invoice following the billing cycle in which they are incurred, and are based on standard rates, or as otherwise agreed upon in writing or via ticket with IWHU's approval.

7. **Taxes:** Customer is responsible for paying all foreign, federal, state, and local sales, use, value added, excise duty and any other taxes assessed with respect to any services, other than those taxes based on IWHU's net income.

8. **Service Credits:** SLA credits will be issued to your Customer account and shall be used to offset future billable services. SLA credits shall not be issued as cash back to the Customer nor shall the service credits be transferable to other account holders. SLA credits shall expire if Customer's account is fully terminated.

9. **Cancellation:** Because cancellation is automated, IWHU requires a written cancellation notice via the customer portal, a minimum of twenty-four ("24") hours prior to 00:00:01 CST (GMT-6) on the Anniversary Billing Date for discontinuance or downgrades of month-to-month services. Failure to supply the requisite twenty-four ("24") hours written notice of cancellation will result in a full billable monthly cycle prior to cancellation. Any service cancellation prior to the minimum deadline will remain online until

the automated process reclaims your server on the Anniversary Billing Date. Notice of written cancellation is required through the online customer portal located at <https://secure.iwebhostu.com>. All Customer data remaining after the cancellation date will be destroyed for security and privacy reasons, unless otherwise required by law.

10. Refunds & Disputes: All services rendered by IWHU are non-refundable. Except any specialization on particular product/s. This includes, but is not limited to: setup fees, one time fees, monthly service fees, upgrade fees, additional service fees, administrative fees, and late fees. Customers seeking to resolve billing errors are instructed to open an accounting ticket inside the Customer portal located at <http://secure.iwebhostu.com>. Customer agrees not to chargeback any credit card payments for services rendered. A chargeback of payment for services rendered will result in an additional charge of one hundred fifty dollars (“\$150”) and will be subject to collection by an authorized collection agency. Customer is responsible for any fees and costs (including, but not limited to, reasonable attorneys’ fees, court costs and collection agency fees) incurred by IWHU in enforcing collection.

11. Non-Payment: All payments are due in full on the Anniversary Billing Date. Failure to remit payment for services on the Anniversary Billing Date is a violation of the TOS. Failure to remit payment for five (“5”) consecutive days, including the Anniversary Billing Date, shall result in a termination of public access to Customer services. Customer will, however, be permitted access to data and services through the service network. Failure to remit payment for services within seven (“7”) consecutive days, including the Anniversary Billing Date, shall result in termination of access to the service network and all services shall be reclaimed. A late fee of twenty dollars (“\$20”) will be incurred for failure to remit payment for services on or before the monthly Anniversary Billing Date. A fifty dollar (“\$50”) reconnect fee will be incurred for failure to remit payment for services after public access has been disconnected. All Customer data remaining after seven (“7”) days of nonpayment will be destroyed for security and privacy reasons, unless otherwise required by law.

12. Data: IWHU agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity, backup, security, and retention. These services include, but are not limited to: hard drive storage, raid hard drive arrays, network attached storage, storage area networks, operating system installs, operating system reloads, customer portal information, and other situations involving customer data. Customer assumes ultimate responsibility for data integrity, retention, security, backup, and ownership. In the event that IWHU handles Customer data, i.e., when replacing hard drives, IWHU will act in accordance with PCI guidelines to ensure data is securely handled.

13. Identity Use: Customer agrees to use the IWHU logo, IWHU information, and/or related services in accordance with IWHU’s approved marketing guidelines. IWHU agrees not to use Customer logos without prior written consent of Customer.

14. Permitted Use: By accepting the LHA, Customer agrees to use IWHU’s services solely for their intended purposes. CUSTOMER SPECIFICALLY AGREES NOT TO TAMPER WITH, MAKE DERIVATIVE WORKS OF, REVERSE COMPILER, REVERSE ENGINEER AND/OR DISASSEMBLE ANY OF IWHU’S SOFTWARE OR FILES. If Customer violates or exceeds the Permitted Use, IWHU reserves the right to immediately terminate Customer’s account and will pursue any and all legal remedies available.

15. LAWS: CUSTOMER AGREES TO ABIDE BY ALL LOCAL, STATE, AND FEDERAL LAWS PURSUANT TO SERVICES DELIVERED IN DALLAS, TEXAS, UNITED STATES OF AMERICA. THIS AGREEMENT IS MADE UNDER AND WILL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES. EXCLUSIVE VENUE AND JURISDICTION FOR ANY AND ALL LEGAL REMEDIES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE DALLAS COUNTY, DALLAS, TEXAS. EACH PARTY IRREVOCABLY CONSENTS TO THE FOREGOING JURISDICTION AND VENUE REQUIREMENTS AND WAIVES ANY AND ALL OBJECTIONS TO SUCH REQUIREMENTS.

16. INDEMNIFICATION: CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS IWHU, IWHU’S AFFILIATES, AND ITS RESPECTIVE OFFICERS, DIRECTORS, ATTORNEYS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, FINES, PUNITIVE DAMAGES, AMOUNTS IN INTEREST, EXPENSES AND DISBURSEMENTS OF ANY KIND AND NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEYS’ FEES) BROUGHT BY A THIRD PARTY UNDER ANY THEORY OF LEGAL LIABILITY ARISING OUT OF OR RELATED TO CUSTOMER’S

CONTENT, ILLEGAL ACTIVITY AND/OR ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF A THIRD PARTY'S COPYRIGHT, TRADE SECRET, PATENT, TRADEMARK, OR OTHER PROPRIETARY RIGHT.

17. LIMITATION OF LIABILITY: EXCEPT AS DESCRIBED IN THE SLA, IWHU SHALL NOT BE LIABLE TO CUSTOMER FOR HARM CAUSED BY OR RELATED TO CUSTOMER'S SERVICES OR INABILITY TO UTILIZE THE SERVICES UNLESS CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IWHU SHALL NOT BE LIABLE TO CUSTOMER FOR LOST PROFITS, INDIRECT, SPECIAL OR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THIS LHA, THE MAXIMUM AGGREGATE LIABILITY OF IWHU AND ANY OF ITS EMPLOYEES, AGENTS OR AFFILIATES, UNDER ANY THEORY OF LAW SHALL NOT EXCEED THE AMOUNT PAID BY THE CUSTOMER FOR HOSTING SERVICES FOR THE SIX MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE CLAIM.

18. Arbitration: Any controversy or claim arising from service or related to this LHA or breach therein in excess of five hundred dollars ("500") shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The venue and jurisdiction requirements set forth above apply to any arbitration proceedings. The resulting judgment rendered by a licensed arbitrator may be entered in any court having valid jurisdiction.

19. Construction and Interpretation: Wherever in this Agreement the masculine, feminine, or neuter gender is used, it will be construed as including all genders, and wherever the singular is used, it will be deemed to include the plural and vice versa, where the context so requires. The division of the agreement into sections/paragraphs, and the insertion of headings/captions, are for convenience of reference only and will not affect the construction or interpretation of the agreement. Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the construction or interpretation of the Agreement.

20. Notice: All communications with respect to the agreement shall be in English and in the case of a notice addressed to the Company, shall be delivered by hand or sent by first-class post to the Company at its registered office address. In the case of a notice addressed to the Client, it shall be delivered to such address as provided to the Company by the Client by first class post, by facsimile transmission or sent by electronic mail. IWHU has ability to change his TOS, AUP, SLA or DMCA on LHA without any Notice. Communications shall be deemed to have been received within two business days (if sent by first-class mail) and on the day on which a facsimile transmission or electronic mail is sent or on the date of service in respect of a notice delivered by hand.

Last Update: 20th February 2011
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