

Terms & Conditions

TERMS AND CONDITIONS FOR VIRTUAL PRIVATE SERVER HOSTING SERVICES

By ordering virtual private server services from CIO Systems of Silicon Valley, LLC (CIO Systems) you ("you" or "Customer") agree to the terms and conditions set forth herein.

1. SUBJECT OF THE AGREEMENT

The Agreement governs the provision of virtual private server services (the "Services") to the Customer by CIO Systems and certain administration and servicing thereof. The Services comprise making available for use by the Customer a partition on a commonly used server with certain, limited server functions granted to the Customer via software control (hereafter, a "Virtual Server"). The Virtual Server is not a dedicated server, and access to certain functions of the system hardware and software are limited. The Customer will have administrative access to the server operating system.

2. SERVICES PROVIDED

CIO Systems agrees to provide the use of a Virtual Server to Customer, for the exclusive use of Customer at the price agreed upon before the initiation of service, for the term agreed to in a signed Services Quote (services quote). Customer represents and warrants that Customer has or has access to the knowledge and expertise necessary to configure, maintain, monitor, and secure the Virtual Server unless otherwise specifically agreed to in the services quote. CIO Systems further agrees to maintain the hardware on which the Virtual Server is located. Except with respect to the use or configuration of remote access, CIO Systems does not provide support or other technical assistance for the administration of Customer installed application software or otherwise related to the Services unless such services are specified in the services quote.

3. FEES

Fees for the Services shall be charged in accordance with the services quote. Fees include initial setup and installation services as set by CIO Systems, and are non-refundable.

4. TERM

Subject to termination in conformity with Section 10 of this Agreement, the initial term of this Agreement shall be for the period agreed to in the services quote. Customer shall notify CIO Systems in writing (email or fax are acceptable) 30 days CIO Systems reserves the right to accept pre-payment of renewal periods and may from time to time offer financial incentives for such pre-payment. The Contract Term, however, shall be for the period agreed to in the services quote. Notwithstanding the provisions of this Section to the contrary, CIO Systems may offer certain packages for which the initial term of this Agreement shall be longer than one month (the "Extended Term Package"), at the end of which this Agreement shall renew automatically on a month-to-month basis pursuant to the terms of this Section. Any and all service fees for the Extended Term Package are due and payable for the entire initial term thereof, and should you terminate, attempt to terminate, or otherwise default on this Agreement prior to the end of the initial term you authorize CIO Systems to charge your credit card for all such fees and charges for the remainder of such initial term. For the purposes of this Section, any modification of the Extended Term Package shall be deemed a termination and shall entitle CIO Systems to the fees owing on the Extended Term Package. Fees paid for the Extended Term Package are not refundable unless this Agreement is terminated by CIO Systems without cause pursuant to Section 10. or as otherwise agreed to in writing by CIO Systems in its sole discretion. If 30 days written notice of intent to terminate before the end of the term is not received by CIO Systems from customer, CIO Systems will renew the existing Agreement for a period of one year, at the current rate.

5. ADMINISTRATIVE ACCESS

Access to the Virtual Server is limited to you and your authorized agents. CIO Systems has limited access to the contents of your Virtual Server. CIO Systems reserves the right to require, at its discretion, software upgrades for the purposes of maintaining security and stability of the services provided and may require the installation of such upgrades. Standard fees for such upgrades shall be set by CIO Systems from time to time and shall be entered into the and approved by Customer. In the event that CIO Systems provides 3rd party applications on monthly subscription basis per licensing agreement with such third party provider, CIO Systems will at all times have remote access to a server administrator account for software license audit purposes.

6. NETWORK DATA TRANSFER CHARGES

There shall be no charge for monthly aggregate or daily average network transfer within the allowance of the Virtual Server package purchased, depending on the terms agreed upon at purchase, as measured during any 30-day period. Monthly aggregate or daily average network traffic in excess of the pre-arranged allowance shall incur an additional fee as set by CIO Systems in the Services Agreement quote. Payment of this fee will be required in order to maintain service. Network traffic shall be measured by CIO Systems and may include all forms of traffic to and from the Virtual Server.

7. HARDWARE AND SOFTWARE CONFIGURATION

All Virtual Servers must use software configurations that conform with CIO Systems requirements. Use of any particular software configuration may be declined at the sole discretion of CIO Systems. Customers have no right or expectation to receive a hardware or software configuration on their Virtual Server that is more capable than that which was initially ordered from CIO Systems, nor can a Customer expect to receive support from CIO Systems with respect to the correction of errors caused by mistakes, faulty settings, and installation errors caused by the Customer. Additions/changes/deletions to configurations that result in price changes will be agreed to by CIO Systems and Customer in an amended Services Agreement.

8. CUSTOMER CONDUCT

8.1.

CIO Systems services and Virtual Servers may only be used for lawful purposes. Any use which violates any local, state, federal, or international laws which may apply to CIO Systems, Customer's local jurisdiction, or any jurisdiction that Customer or Customer's site may be subject to is strictly prohibited.

8.2.

While using a CIO Systems supplied Virtual Server, Customer will not:

8.2.1.

Restrict or inhibit any other user from using and enjoying the Internet;

8.2.2.

Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law, including without limitation the U.S. export control laws and regulations, and laws protecting intellectual property including copyright, trademark, trade secret, misappropriation and anti-dilution laws;

8.2.3.

Post, publish, transmit, reproduce or distribute any information or software which contains a virus or other harmful component;

8.2.4.

Operate an open mail relay;

8.2.5.

Transmit any unsolicited commercial or bulk e-mail or engage in any activity known or considered to be "spamming" or "Mail Bombing";

8.2.6.

Use any CIO Systems Virtual Server or service to carry out, or assist in the carrying out of, any "denial of service" attacks on any other website or internet service.

8.2.7

Duplicate and/or transfer offsite any software installed on Customer's virtual server that is licensed to CIO Systems under a subscription licensing agreement with Software Vendor without prior authorization from CIO Systems. Any installed software that is transferred to Customer must be unlicensed by CIO Systems prior to any transfer of installed software to Customer.

9. INDEMNIFICATION

9.1.

You agree to fully defend and indemnify and hold harmless CIO Systems of and from any and all third party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorneys fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any breach or claim of breach of this agreement or your negligence whether active or passive or any negligence of CIO Systems in any way related to your use of the CIO Systems Services or any portion thereof.

9.2.

You agree to fully defend and indemnify and hold harmless CIO Systems of and from any and all third party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorneys fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any violation or claimed violation of any copyright or other intellectual property right of any third party which is in any way related to your use of the CIO Systems Services or any portion thereof. Choice of counsel remains exclusively that of CIO Systems.

10. TERMINATION

10.1. Termination for Convenience by CIO Systems.

CIO Systems may terminate this Agreement for convenience, for any reason or no reason, upon thirty (30) days' written notice to Customer. Customer may not terminate this Agreement for convenience during its initial term or any renewal term; Customer's only means of ending this Agreement are (a) termination for cause under Section 10.2, or (b) declining to renew at the end of the then-current term under Section 4.

10.2. Termination for Cause.

Either party may terminate this Agreement immediately upon written notice if the other party materially breaches this Agreement and fails to cure the breach within fifteen (15) days after written notice of the breach, or becomes insolvent, makes an assignment for the benefit of creditors, or becomes the subject of a bankruptcy proceeding not dismissed within sixty (60) days. Notwithstanding the foregoing, if CIO Systems believes, in its sole discretion, that Customer has breached any provision of Section 8 (Customer Conduct) or otherwise engaged in conduct or activities that violate this Agreement, CIO Systems may immediately suspend or deny Customer's access to the Virtual Server, and terminate this Agreement, without prior notice and without an opportunity to cure, and may, without any liability to Customer and in addition to any other remedies, erase or purge any related content or information from CIO Systems' Equipment. CIO Systems shall have no responsibility to notify any third-party providers of services, merchandise, or information, nor any responsibility for any consequences resulting from such discontinuance or lack of notification.

10.3. Termination for Non-Payment.

CIO Systems may suspend or terminate the Services for non-payment as provided in Section 17.

10.4. Effect of Termination.

Upon termination: (a) Customer will pay all fees accrued through the termination date; (b) CIO Systems is not obligated to retain any Customer content or data, or provide further access to the Virtual Server, more than thirty (30) days after termination; and (c) Customer agrees that CIO Systems has the right, but not the obligation, to monitor the Virtual Server electronically in connection with termination and to disclose any information as necessary under the law, or to protect itself from claims by a third party or parties.

10.5. Survival.

Sections 9, 11, 12, and 18 through 24 survive termination or expiration of this Agreement, along with any other provision that by its nature should survive.

11. OWNERSHIP OF SERVER

All servers and other Equipment shall at all times remain the property of CIO Systems and are not subject to Customer demands.

12. LIMITED WARRANTIES

12.1.

CIO Systems makes every reasonable effort to maintain the uninterrupted operation of the CIO Systems Services, subject to regularly scheduled server and network maintenance cycles. However because many events and circumstances are beyond the control of CIO Systems, CIO Systems does not in any way warrant or otherwise guarantee the availability of the CIO Systems system or servers, including but not limited to Virtual Servers, and is not responsible for any delay or loss of data, lack of connection, slow connection, or any other such issues whether due to the active or passive negligence of CIO Systems. If an outage occurs that is due to the active or passive negligence of CIO Systems, CIO Systems will compensate Customer as agreed to in the Services Agreement. CIO Systems may, at its sole discretion, limit or deny access to its servers, including but not limited to Virtual Servers, if, in the judgment of CIO Systems, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network, the software or the data stored on the CIO Systems system.

12.2.

Unless specifically defined in the Services Agreement, ALL CIO Systems SERVICES ARE PROVIDED TO YOU ON AN "AS IS" BASIS, AND WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

12.3.

THE TOTAL SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU AS THE RESULT OF ANY BREACH OF THIS AGREEMENT, NEGLIGENCE, OR ANY ACTION OR FAILURE TO ACT WHETHER INTENTIONAL OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF SERVICE FEES PAID BY YOU TO CIO SYSTEMS IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING ANY ALLEGATION OF ENTITLEMENT TO SUCH REMEDY. IN NO EVENT SHALL CIO Systems BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR LOSS OF BUSINESS AS THE RESULT OF ANY SUCH ACTION OR INACTION WITHOUT REGARD TO THE LIKELIHOOD OF ANY SUCH DAMAGES.

12.4.

Customer understands that by placing information on a Virtual Server, depending on the configuration of the Virtual Server, such information may be accessible to all Internet users. CIO Systems does not limit or restrict access to such information, nor protect any such information from copyright infringement or other wrongful activity. Customer assumes full responsibility and risk for their use of the Virtual Server. It is the Customer's sole responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services, and other information, and the quality and merchantability of all merchandise, provided through CIO Systems or on the Internet generally.

13. IDENTIFICATION INFORMATION

Customers must be at least 18 years of age or require the approval of the minor's legal guardian. Customer agrees to supply CIO Systems with a current and truthful full name, e-mail address, postal address, and telephone number and, in case the Customer is a minor, with the current and truthful full name, e-mail address, postal address, and telephone number of at least one legal guardian. Customer agrees to keep this information current and to inform CIO Systems whenever any of this information changes.

14. NO INTERFERENCE WITH OPERATION OF SYSTEM

14.1.

Customer agrees not to maliciously or intentionally interfere with the proper operation of the server and network, including but not limited to defeating identification procedures, obtaining access beyond that which Customer is authorized for, and impairing the availability, reliability, or quality of service for other Customers. Customer further agrees not to interfere with the proper operation of other systems reachable through the Internet, including any attempt at unauthorized access. Customer agrees to follow the Acceptable Use Policy of any network or service to which Customer connects.

14.2.

Customer agrees to adhere to all system policies of CIO Systems, as such may be published by CIO Systems online from time to time, including restrictions on services available, restrictions on certain features, and all other policies designed to protect and enhance the quality and reliability of the services of CIO Systems. Customer agrees to abide by any and all future policy decisions by CIO Systems.

15. SECURITY

15.1.

Except with respect to issues concerning the physical security of CIO Systems' data center facilities, Customer agrees that the security of the Virtual Server and all Services is solely Customer's responsibility. It is the sole responsibility of the Customer to maintain and update security software on the Virtual Server. Under no circumstance will CIO Systems be held liable for security breaches and damage caused by the Customer's failure to maintain or update the security software or to maintain adequate security protocols in the administration of the Virtual Server.

15.2.

To secure Virtual Servers from external misuse CIO Systems configures its firewall(s) to only allow specific network ports necessary to accommodate Customer's application requirements. Additional network port allowances requested by Customer will be reviewed and agreed to in the Services Agreement if CIO Systems deems that such request will not jeopardize the overall security needs of CIO Systems' network.

15.3.

Customer agrees that if the security of Customer's Virtual Server has been compromised in any way, Customer will notify CIO Systems immediately in writing as set forth in Section 22 herein. Customer shall be held fully responsible for any misuse or compromise of Customer's Virtual Server. Customer agrees that if any security violations are believed to have occurred in association with Customer's Virtual Server, CIO Systems has the right to suspend access to the Virtual Server pending an investigation and resolution. Customer also agrees that CIO Systems has the right to cooperate in any government or legal investigation regarding any aspect of its services, including any servers or Virtual Servers used by Customer. Any use of CIO Systems' system to engage in software piracy or other violations of law will result in service suspension and be immediately reported to the appropriate authorities.

16. TRANSMITTAL OF MATERIALS

Customer agrees not to transmit unsolicited or prohibited advertising or other harassing or illegal materials through electronic mail, Usenet postings, or other Internet media. The use of CIO Systems or any other service with reference to services obtained through CIO Systems, for unsolicited mass mailings, postings, or other activities considered an annoyance to others, commonly referred to as "spamming", is strictly prohibited and may cause

Customer's services to be terminated immediately and without warning, and Customer will be held fully responsible for any damages to Customer, CIO Systems, or any other party or parties resulting from any such conduct.

17. PAYMENT

17.1.

Payment of fees must be made by Credit Card (American Express, Visa, MasterCard, Discover or ACH). Payment for the Services is due in advance, unless specifically stated otherwise in the offer or promotion pursuant to which you have ordered or are ordering the Services. All payments shall be made in United States Dollars.

17.2.

Prior to activation of your user account and at any applicable time thereafter you authorize CIO Systems to charge the credit card or ACH account provided by you for the amount of the fees due for Services, together with any applicable set-up charges or any other charges outlined herein as may be applicable. You further authorize CIO Systems to charge your credit card or ACH account for all subsequent period fees at, or a reasonable period in advance of, the commencement of any such subsequent period. Should you fail to provide credit card or ACH account authorization to pay for the Services, CIO Systems, at its sole discretion will have the right to suspend or terminate the Services. Refusal or rejection of any charge or any portion thereof is grounds for termination or suspension of the Services, at the sole option of CIO Systems.

17.3.

Refunds of Service fees will be made only for pre-payment of Service fees beyond the renewal date following the effective notice and termination of this Agreement as provided for herein. All refunds shall be pro-rated based upon the number of days for which Services remain unused as of that renewal date. CIO Systems may grant refunds under any other circumstance it deems appropriate without waiving any other rights hereunder.

18. PRIOR AGREEMENTS

This Agreement supersedes any written, electronic, or oral communication Customer may have had with CIO Systems or any agent or representative thereof, and constitutes the complete and total agreement between the parties.

19. SEVERABILITY

If any provision of this Agreement is determined to be invalid or unenforceable, all other provisions shall remain in full force and effect and said provision shall be reformed only to the extent necessary to make it enforceable.

20. JURISDICTION

This Agreement shall be interpreted under the laws of the State of California, without regard to any conflict of laws provisions.

21. DISPUTE RESOLUTION

Any claim, dispute or controversy with respect to, in connection with or arising out of this Agreement shall be subject to and decided by arbitration in the City of Redwood City, County of San Mateo, State of California.

22. NOTICE

Any notice under this Agreement shall be given by CIO Systems to you via e-mail at the address provided by you to CIO Systems at the commencement of this Agreement or as CIO Systems is subsequently advised pursuant to the requirements of Section 14 hereof. Notice to you at this address is deemed sufficient regardless of your receipt of such e-mail.



23. NO AGENCY

Nothing contained herein shall be interpreted as creating an agency, partnership or joint venture between CIO Systems and the Customer.

24. AMENDMENT

CIO Systems may without advance notice amend this Agreement and any fee schedules related thereto from time to time, and will do so by posting the new Agreement on the CIO Systems website in place of the old. Each and every such amendment shall become effective immediately for all pre-existing and future accounts. It is your responsibility to periodically check the CIO Systems website for updates of this Agreement.