



## **Terms of Service**

This Hosting Services Terms of Services Agreement contains the complete and entire terms and conditions that apply to the Client's and Client's end user's use of DEDICO, LLC's Products and Services, as defined below. This Agreement and all matters arising out of or otherwise relating to this Agreement shall be governed by the laws of the State of Texas. DEDICO, LLC may modify the terms of this Agreement, as defined below, at its sole discretion upon thirty (30) days notice, which may be affected by posting such changes onto the DEDICO, LLC website, located at [www.dedico.com](http://www.dedico.com). DEDICO, LLC agrees to supply the products and services in accordance with the terms and conditions of this agreement beginning on the effective date. Client's continued use of the Products and Services after the effective date of any such notice constitutes Client's acceptance of such changes.

### **Products and Services**

All subscriptions to Products and Services are subject to acceptance by DEDICO, LLC. Client's subscription to the Services will be deemed accepted by DEDICO, LLC when DEDICO, LLC delivers the invoice via email. DEDICO, LLC reserves the right to refuse to provide Client with any Service for any reason. DEDICO, LLC also reserves the right to interrupt access to the Services to perform regular and emergency maintenance as needed. Client may order additional services at any time, provided that Client agrees to pay the then-current fees for such additional services. All additional Products and Services shall be considered "Services" hereunder. All Services provided are subject to the terms and conditions of this Agreement. DEDICO, LLC may perform additional technical, supplemental, or professional services (other than the Products and Services) for Client at either DEDICO, LLC's published pricing rates or at rates mutually agreed to in writing between Client and DEDICO, LLC. Also, DEDICO, LLC may perform corrective services as provided for in the AUP at the pricing set forth therein and without obtaining Client's consent in advance.

### **Bandwidth Usage**

The Burstable Servers, Virtual Private Servers (VPS), Colocation and Metered Servers account plans come with a predetermined amount of bandwidth allowance. This predetermined allowance can be used without any additional charges.

All Burstable Servers, Virtual Private Servers (VPS) and Colocation plans will be billed \$10.00 for each 1 Mbps of traffic exceeded, billed at 95<sup>th</sup> percentile, unless notated differently in writing from an authorized Dedico, LLC representative. 95<sup>th</sup> percentile billing is determined by taking readings of inbound and outbound bandwidth utilization on regular intervals. The larger bandwidth utilization of the two is recorded. At the end of the billing period, the highest 5% of the readings are discarded leaving the 95<sup>th</sup> percentile mark.

Metered Servers and Shared Hosting plans will be billed \$1.00 per 1 GB of traffic exceeded, unless notated differently in writing from an authorized Dedico, LLC representative.

Unmetered Servers and Value Series Servers will not be subject to overages unless otherwise noted by an authorized Dedico, LLC representative.

### **Billing and Payments**

By the Account Activation Date of each month, Dedico, LLC shall deliver, by e-mail or regular mail, an invoice in accordance with the applicable Service Fees for services rendered for the current month. When an invoice is delivered to the Client, payment shall be remitted to Dedico, LLC by no later than the specified payment due date. Dedico, LLC shall be entitled to immediately terminate this agreement for Client's failure to make timely payments. You

will be provided with an invoice on a monthly basis. All credit cards are billed automatically on a monthly basis if Client chooses auto-bill option. It is the Client's responsibility to ensure that they have sufficient credit to cover this transaction. In the event that there is insufficient credit, we will send an e-mail notification, at which point we will need to be provided with another credit card account number within 2 business days. If we do not receive a response within 2 business days, the account, and all accounts under that account plan, can be suspended.

Clients that do not choose auto-bill option will be invoiced on a monthly basis at least 10 days prior to due date. Clients must submit payment on or before the due date. Acceptable forms of payment include credit card, wire transfers, check, money order, and paypal. Accounts that are 48 hours past due or more are subject to suspension.

A \$25 late fee will be assessed for all accounts that are past due as well as \$5 per day fee for each day a past due invoice remains unpaid.

The pricing for all Products and Services ("Fees") shall be DEDICO, LLC's then-current pricing for such Products and Services or the price agreed upon in writing. All set-up fees are non-refundable. Amounts for Products and Services are payable in advance. Client's failure to make payment of Services, when due, may result in the suspension and/or termination of Services.

Client agrees to pay any and all taxes, including personal property, value added, or sales taxes, resulting from Client's use of the Services. Client also agrees to pay all attorney and collection fees arising from DEDICO, LLC's efforts to collect any past due amounts.

#### **Acceptable Use**

Client agrees to comply with the DEDICO, LLC's Acceptable Use Policy ("AUP"), which may be found by going to DEDICO, LLC's web site at [www.dedico.com](http://www.dedico.com), which is hereby made a part of this Agreement. DEDICO, LLC reserves the right to modify the AUP at any time by posting the modified policy on its web site. Client agrees to monitor the [www.dedico.com](http://www.dedico.com) website for any changes to the AUP. Client's continued use of the services after the effective date of any changes to the AUP constitutes Client's acceptance of such changes.

DEDICO, LLC may, at its sole discretion, immediately terminate Client's access to the Services, or this Agreement, if Client's conduct violates the AUP found at [www.dedico.com](http://www.dedico.com), or if any of Client's end user's action(s) violates the AUP.

DEDICO, LLC will not actively monitor the content of the web sites being hosted by DEDICO, LLC, although DEDICO, LLC, at its sole discretion, may elect to electronically monitor its network and may disclose any content or records concerning Client's account as necessary to satisfy any law, regulation, or other governmental request or to properly operate our network and protect any of our Clients. DEDICO, LLC will investigate complaints of a violation of a third party right or of the AUP. DEDICO, LLC will cooperate with those attempting to minimize Internet abuse and reserves the right to institute "filters" or other mechanisms for that purpose. DEDICO, LLC will cooperate with law enforcement authorities and will notify such authorities if it suspects that Client or any of Client's end users are engaged in illegal activities. Client acknowledges and expressly agrees that DEDICO, LLC will not be liable to Client or any of Client's end users for any action DEDICO, LLC takes to remove or restrict access to the Services for any alleged violation of the AUP, or exercising its rights under the Digital Millennium Copyright Act of 1998.

#### **Indemnification**

CLIENT AGREES TO DEFEND, INDEMNIFY, AND HOLD DEDICO, LLC AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES, INCLUDING REASONABLE ATTORNEYS' AND EXPERTS' FEES, RELATED TO OR ARISING FROM (A) ANY BREACH OF CLIENT'S COVENANTS UNDER THIS AGREEMENT; (B) CLIENT'S USE (OR MISUSE) OF

THE SERVICES; (C) ALL CONDUCT AND ACTIVITIES OCCURRING UNDER CLIENT'S USER ID AND PASSWORD; (D) ANY ITEM OR SERVICE SOLD OR ADVERTISED IN CONNECTION WITH CLIENT'S CONTENT OR CLIENT'S INFORMATION AND DATA; (E) ANY DEFAMATORY, LIBELOUS OR ILLEGAL MATERIAL CONTAINED WITHIN CLIENT'S CONTENT OR CLIENT'S INFORMATION AND DATA; (F) ANY CLAIM OR CONTENTION THAT CLIENT'S CONTENT OR CLIENT'S INFORMATION AND DATA INFRINGES ANY THIRD PARTY'S PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS OR VIOLATES ANY THIRD PARTY'S RIGHTS OF PRIVACY OR PUBLICITY; (G) THIRD PARTY ACCESS OR USE OF CLIENT'S CONTENT OR CLIENT'S INFORMATION AND DATA; OR (H) ANY VIOLATION OF THE AUP. DEDICO, LLC RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO PARTICIPATE IN THE DEFENSE OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION FROM CLIENT, BUT SHALL HAVE NO OBLIGATION TO DO SO. CLIENT SHALL NOT SETTLE ANY SUCH CLAIM OR LIABILITY WITHOUT THE PRIOR WRITTEN CONSENT OF DEDICO, LLC, WHICH SHALL NOT BE UNREASONABLY WITHHELD.

### **No Warranties**

CLIENT EXPRESSLY AGREES THAT CLIENT'S USE OF THE SERVICES IS AT CLIENT'S SOLE AND EXCLUSIVE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" BASIS. DEDICO, LLC EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. DEDICO, LLC MAKES NO WARRANTY THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES DEDICO, LLC MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES OR THAT DEFECTS IN ANY SOFTWARE, HARDWARE OR THE SERVICES WILL BE CORRECTED. CLIENT UNDERSTANDS AND AGREES THAT ANY USE THAT IS MADE BY CLIENT OF ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS AT CLIENT'S OWN DISCRETION AND RISK, AND THAT CLIENT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CLIENT'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA.

DEDICO, LLC MAY MAKE THIRD-PARTY GOODS, SERVICES AND/OR SOFTWARE AVAILABLE TO CLIENT THAT ARE NOT PART OF THE SERVICES ("THIRD-PARTY SERVICES"). DEDICO, LLC HAS NO CONTROL OVER THE CONTENT OF THIRD-PARTY SERVICES. USE OF ANY THIRD-PARTY SERVICES WILL BE AT CLIENT'S OWN AND SOLE RISK AND SUBJECT TO THE TERMS AND CONDITIONS OF A SEPARATE AGREEMENT BETWEEN CLIENT AND THE THIRD-PARTY.

DEDICO, LLC MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICES OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CLIENT FROM DEDICO, LLC OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY, WHETHER BY IMPLICATION, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY MARKETING OR PROMOTIONAL MATERIALS DESCRIBING THE SERVICES ON DEDICO, LLC'S WEBSITE.

UNLESS OTHERWISE AGREED TO IN WRITING, DEDICO, LLC DOES NOT MAKE A BACK-UP OF CLIENT'S DATA AS PART OF THE SERVICES. ACCORDINGLY, WE ENCOURAGE CLIENT TO MAKE

A BACK-UP OF CLIENT'S SITE(S) ON A REGULAR BASIS.

### **Termination**

This Agreement shall be effective for as long as Client uses the Services. DEDICO, LLC reserves the right to terminate this Agreement, with or without cause, upon thirty (30) days notice to Client.

In addition to DEDICO, LLC's right to terminate this Agreement provided elsewhere in this Agreement, DEDICO, LLC may terminate this Agreement effective immediately if, based on DEDICO, LLC's sole judgment, it determines that: (a) Client or any of Client's end-user's have breached the AUP (located at [www.dedico.com](http://www.dedico.com)), (b) infringed or violated any intellectual property right or privacy or publicity right of a third party, (c) not complied with Title 18, U.S.C. s. 2257, or (d) any of Client's Content contains images which constitute child pornography, obscenity, bestiality, actual depictions of violence, or are otherwise illegal in the United States of America.

The termination of this Agreement will terminate Client's access to the Services and Client's license to the Host Materials. DEDICO, LLC shall not be liable to Client or to any third party for termination of the Services for any reason (if, at the time of termination, DEDICO, LLC reasonably believed that either Client or any of Client's end users were in violation of the AUP). The termination of this Agreement does not relieve Client of Client's obligation to pay any Fees accrued or payable to DEDICO, LLC prior to the effective date of termination of this Agreement.

Upon termination of this Agreement, DEDICO, LLC reserves the right to maintain copies of Client's data files and records for archival purposes. DEDICO, LLC reserves the right to impose an early termination charge for all Services terminated prior to the last day of the billing cycle.

### **Governing Law/Jurisdiction**

THIS AGREEMENT AND ANY DISPUTE ARISING FROM THE PERFORMANCE OR BREACH HEREOF SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO CONFLICTS OF LAWS PRINCIPLES AND EXCLUDING ANY APPLICATION OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. CUSTOMER (I) HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS LOCATED IN HARRIS COUNTY AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BROUGHT BY THE CUSTOMER OR DEDICO, LLC OR THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, (II) HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH SUITS, ACTIONS OR PROCEEDINGS MAY BE HEARD AND DETERMINED IN SUCH TEXAS STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY LAW, IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS AND (III) TO THE EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR PROCEEDING ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF THE ABOVE-NAMED COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER OR THAT THIS AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT. A FINAL JUDGMENT OBTAINED IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING REFERRED TO IN THIS SECTION 8 SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT OR JUDGMENT OR IN ANY MANNER AS PROVIDED BY APPLICABLE LAW.

