



TERMS OF SERVICE

(Revision : 2010.07.01)

1. GENERAL.

1.1. Complete Agreement.

This Agreement is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior proposals and agreements, oral or written, between the parties. No agreement created hereunder may be modified except by a written instrument duly executed by the parties hereto.

1.2. Severability and No Waiver

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the spirit and intent of the invalid provision. The waiver by either party of a breach of any provision of this Agreement formed hereunder will not operate or be interpreted as a waiver of any other or subsequent breach.

1.3. Governing Law, Jurisdiction and Venue

This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the Province of British Columbia, Canada without regard to conflict or choice of law provisions. Any action or proceeding arising out of or related to this Agreement shall be brought only in the courts of such jurisdiction. The parties hereby consent to such jurisdiction and venue.

1.4. Allocation of Risk

Customer acknowledges and agrees that the fees charged by Intraworks I.T. Management in this Agreement reflect an allocation of risk between the parties, including, but not limited to, the limitation of liability and exclusion of remedies described in this Agreement. A modification of the allocation of risks set forth in this Agreement, would affect the fees charged by Intraworks I.T. Management, and in consideration of such fees, Customer agrees to such allocation of risk.

1.5. Force Majeure

Intraworks I.T. Management shall be excused from performance and shall not be liable for any delay in whole or in part, caused by the occurrence of any contingency beyond the reasonable control of Intraworks I.T. Management or its subcontractors or suppliers including, but not limited to, war, sabotage, insurrection, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof affecting the terms hereof, accident, fire, explosion, flood, severe weather or other act of god, or shortage of labour or fuel or raw materials.

2. DELIVERY OF SERVICES

2.1. Service Delivery

Service Delivery. All services are delivered from an Intraworks I.T. Management data centre. Target delivery timeframe is 3 business days from order acceptance. The customer will receive a confirmation with planned delivery timeframe after order placement.

2.2. Service Levels

Services will be delivered with target timeframes and performance as set forth in the Service Level Agreement, as amended.

3. CUSTOMER RESPONSIBILITIES.

3.1. Co-operation

Customer shall co-operate with and assist Intraworks I.T. Management by providing to Intraworks I.T. Management such information as Intraworks I.T. Management may reasonably request. All such information and access will be considered Customer's responsibility, the timely, complete and accurate performance of which is a condition precedent to Intraworks I.T. Management meeting its timelines.

3.2. Software Licensing

Customer shall comply with all manufacturers' software licensing rule. Customer acknowledges that any Microsoft Windows licensing being provided by Intraworks I.T. Management is Microsoft's "anonymous" version of this software and subject to the licensing restrictions of these Operating Systems.

3.3. Acceptable Usage Policy (AUP)

Customer shall comply with and shall take all reasonable steps to ensure compliance with all reasonable restrictions and conditions on Customer's use of the Services including as set forth in the AUP, as amended and shall cooperate with Intraworks I.T. Management in the event of any suspected violation of the AUP.

Use of the Services is subject to the following rules and guidelines. You are responsible for ensuring that you fulfill your responsibilities when using Intraworks' Services by complying with this Acceptable Usage Policy (AUP). Any activity that violates a Local, Provincial, Federal or International law, order or regulation, is a violation of this Agreement

Prohibited activities include, but are not limited to:

- 3.3.1. Posting, storing, transmitting or disseminating: unlawful material, including child or other pornography, any content, data or other material which is libelous, obscene, hateful, threatening, racially or ethnically offensive, defamatory or which in any way constitutes or encourages conduct that would constitute a criminal offence.
- 3.3.2. Sending any unsolicited e-mail, such as spam and/or sending any e-mail intended to block or impair the use of Internet services by other users.
- 3.3.3. Distributing software or other material that can be used to breach the security of other Internet users.
- 3.3.4. Disrupting Intraworks' ability in any way to keeping its network operational.
- 3.3.5. Disseminating material which violates copyright or intellectual property rights. The customer assumes all risk with respect to whether material is part of the public domain.
- 3.3.6. Pyramid or other illegal soliciting schemes.
- 3.3.7. Fraudulent activities; including but not limited to: impersonating any person or entity, or forging anyone's digital or manual signature.
- 3.3.8. Encouraging anyone to commit any of the above mentioned acts

3.4. Security and Data Back Up

Customer shall use reasonable security precautions with respect to use of the Services and shall create and maintain a current copy of all content (including software, data or other information) stored on Intraworks I.T. Management servers or otherwise provided to Intraworks I.T. Management and store the copy in a secure location.

4. PAYMENTS.

4.1. Fees

The monthly, set up and other fees for Intraworks I.T. Management Services shall be as described in the applicable Managed Hosting Service Schedule.

4.2. Taxes

In addition to the fees described in the Managed Hosting Service Schedule, Customer shall be responsible for paying any applicable sales, use, excise, value added, or similar sales taxes or assessments imposed upon the Services provided hereunder by any federal, provincial/state, or local government authority, exclusive of any taxes based upon Intraworks I.T. Management's income or payroll.

4.3. Payment Terms

Intraworks I.T. Management will invoice Customer in accordance with the payment schedule specified in the Managed Hosting Service Schedule. All invoices shall be processed on the due date via the customer's credit card.

4.4. Refund Policy

Any prepayment is a commitment to services that cannot be refunded outside of termination for cause.

4.5. Credit Authorization

The customer hereby gives consent and authorization for Intraworks I.T. Management to obtain financial, credit and related information for the purpose of assessing the customer's credit worthiness.

5. TERM AND TERMINATION.

5.1. Term

This Agreement shall commence on the server installation date and continue for the term set out in the service order. If the term is not stated, the term will be one month. At the end of the initial term, the agreement will be automatically renewed for one month periods until terminated by either party.

5.2. Termination

Either party may terminate this Agreement, upon the occurrence of a material breach by the other party, which material breach has not been cured within ten (10) after receipt of written notice thereof by the breaching party from the other, unless the cause for termination is failure to pay, in which case this Agreement may be terminated if the non-payment has not been cured within five (5) days' after receipt of written notice, excluding amounts contested in good faith. In the event of termination, Customer shall pay Intraworks I.T. Management for all Services performed up to the date of termination and for any Third Party Products it has ordered on behalf of Customer, such payment not being due until delivery of the Third Party Products.

5.3. Customer Breach

Customer acknowledges that the fees including recurring fees for Services are based on Customer agreeing to pay the fee for the entire initial term of the Service. If Intraworks I.T. Management terminates this Agreement or any Managed Hosting Services Schedule due to Customer's material breach or Customer terminated for any reason other than Intraworks I.T. Management's material breach, Customer shall:

- 8.3.1. immediately pay to Intraworks I.T. Management as liquidated damages and not as penalty the total of all sums due during the term of the applicable Managed Hosting Services Schedule, including the monthly recurring fee for the remaining period of the initial term ; and
- 8.3.2. reimburse Intraworks I.T. Management in full for any costs, losses, expenses or damages Intraworks I.T. Management reasonably incurs as a result of the termination.

6. SERVICE CHANGES.

6.1. Term

This Agreement shall commence on the server installation date and continue for the term set out in the service order. If the term is not stated, the term will be one month. At the end of the initial term, the agreement will be automatically renewed for one month periods until terminated by either party.

6.2. Service Downgrades

A service downgrade may only take affect on an anniversary date.

6.3. Bandwidth and Overage Charges.

- 9.3.1. Unmetered Bandwidth. Your selected level of bandwidth will be limited to the port speed of the network switch. You will not accrue bandwidth overages charges as you will not be able to exceed the allotted bandwidth amount. Please note that throughput speed is not guaranteed for the unmetered bandwidth servers.
- 9.3.2. Metered Bandwidth. On our metered bandwidth service you purchase specific amount of bandwidth. Intraworks I.T. Management will calculate your bandwidth use each month based on your 95th percentile usage and convert the total to GB used.

7. CONFIDENTIALITY AND PRIVACY.

7.1. Confidential Information

The parties acknowledge that it will be necessary for each of them to disclose or make available to each other information and materials that may be confidential or proprietary or may contain valuable trade secrets, and that such information may already have been disclosed prior to the Effective Date (collectively the "Confidential Information"). Prior to disclosure, the disclosing party shall designate all Confidential Information by marking the information with the word "Confidential" or similar wording.

7.2. Non-Disclosure

Both during and after the Term of any agreement formed hereunder each of the parties agree:

- 10.2.1. to use commercially reasonable efforts to protect the Confidential Information of the other party from unauthorized use or disclosure and to use at least the same degree of care with regard thereto as it uses to protect its own Confidential Information of a like nature;
- 10.2.2. to use and reproduce the Confidential Information of the other party only as permitted under this Agreement or as needed to perform its duties hereunder; and
- 10.2.3. is furnished to others by the disclosing party without restriction on disclosure;
- 10.2.4. can be shown by the receiving party to have been independently developed by such party prior to the execution of this Agreement; or
- 10.2.5. is required to be disclosed by law, or to a competent court, government or regulatory body having the right to same.

7.3. Exceptions

Information will not be considered to be Confidential Information if it:

- 10.3.1. is already, or otherwise becomes, publicly known by third parties as a result of no act or omission of the receiving party;
- 10.3.2. is lawfully received, after disclosure hereunder, from a third party having right to disseminate the information without restriction on disclosure;
- 10.3.3. is furnished to others by the disclosing party without restriction on disclosure;
- 10.3.4. can be shown by the receiving party to have been independently developed by such party prior to the execution of this Agreement; or
- 10.3.5. is required to be disclosed by law, or to a competent court, government or regulatory body having the right to same.

7.4. Injunctive Relief

The parties agree that any breach by either party or any of its officers, directors, or employees, of any provisions of this Section may cause immediate and irreparable injury to the other party and that, in the event of such breach, the injured party will be entitled to seek injunctive relief as well as any and all other remedies at law or in equity.

8. INTELLECTUAL PROPERTY

Each party acknowledges and agrees that the other party retains full ownership and rights to its trade secrets, inventions, copyrights and other intellectual property and that Intraworks I.T. Management shall own any intellectual property that it may develop in the course of performing the Services. Customer does not acquire any ownership interest or rights to Intraworks I.T. Management's servers or other hardware and has no right of physical access to the hardware. Upon termination, Customer shall promptly release any Internet protocol numbers, addresses or address blocks assigned to Customer in connection with the Service (but not any URL or top level domain or domain name) and agrees that Intraworks I.T. Management may take steps to change or remove any such IP addresses.

9. WARRANTIES.

9.1. Warranties.

- 12.1.1. Each party represent and warrant to the other that (i) it has the power and legal right to enter into this Agreement; (ii) it has taken all necessary action to enter into this Agreement and any Managed Hosting Services Schedule; and (iii) the execution and delivery of this agreement and performance of obligations hereunder do not conflict or violate applicable laws or regulations or constitute a default under its charter documents.
- 12.1.2. Customer further represents and warrants that the information it has provided and will provide to Intraworks I.T. Management for the purposes of establishing and maintaining the Services is accurate and complete.
- 12.1.3. Intraworks I.T. Management does not warrant or represent that the Services will be uninterrupted, error-free or completely secure. Customer acknowledges that there are risks inherent in Internet connectivity that could result in the loss of Customer's confidential information and property.

9.2. Disclaimer

The foregoing warranties by each party are in lieu of all other warranties, express or implied, with respect to any managed hosting service schedule formed hereunder, including but not limited to implied warranties or conditions of merchantability and fitness for a particular purpose. Customer is solely responsible for the suitability of the services chosen. All goods and services are provided on an "as is" basis, except as expressly stated elsewhere. Neither party shall have any liability whatsoever, for any cover, set-off or any indirect, consequential, exemplary, incidental, or punitive damages, including lost profits, even if such party has been advised of the possibility of such damages

10. LIMITATION OF LIABILITY.

Intraworks I.T. Management's liability to customer for any reason and upon any cause of action, whether sounding in tort, contract, or any other legal theory, shall at all times and in the aggregate be limited to the amount actually paid by customer to Intraworks I.T. Management during the three full calendar months immediately preceding the month in which the event upon which liability is predicated for services provided by Intraworks I.T. Management hereunder pursuant to the applicable managed hosting service schedule.

Notwithstanding anything to the contrary contained or implied herein, Intraworks I.T. Management shall have no liability for any damages whatsoever relating to the third-party products, or any goods or services not developed or provided by Intraworks I.T. Management.