

Hosting Services Agreement

This OpenSRS Hosting Services Agreement ("HSA") constitutes a binding contractual agreement between Tucows.com, Co. ("Tucows" or "Company") and you, the user of our OpenSRS hosting services ("you" or "Reseller"). This HSA includes provisions that you need to convey to your customers for hosting. Using or reselling the hosting service constitutes agreement to these terms.

I. General Terms

- 1. Monthly Service Fees:** Fees for service(s) ordered by Reseller shall begin on the date of the initial order. That date shall serve as the monthly anniversary 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. We will provide 30 days' notice of price increases; ongoing use of the service will constitute agreement to the new price.
- 2. Additional Service Fees:** Additional services ordered on the billing anniversary date will be billed for the full month service and will continue to be billed each month on the anniversary date. Additional services ordered after the normal anniversary billing date will be prorated 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. Special pricing may be terminated at the end of the term for which the special pricing was initially granted.
- 3. 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.
- 4. Service Credits:** Service credits will be issued to your Reseller account and shall be used to offset future billable services. Service credits shall not be issued as cash back to the Reseller nor are service credits transferable to other account holders or to other accounts held by the same Reseller.
- 5. Cancellation:** Company requires a thirty (30) day cancellation notice prior to the anniversary billing date for discontinuance or downgrades of month-to-month services. Failure to supply the requisite thirty (30) days notice of cancellation will result in a full billable monthly cycle prior to cancellation. Reseller data remaining after the cancellation date may be destroyed for security and privacy reasons.
- 6. Refunds & Disputes:** All services rendered by the Company are non-refundable. This includes but is not limited to: set-up fees, one time fees, monthly service fees, upgrade fees, additional service fees, administrative fees, and late fees. Resellers seeking to resolve billing errors are instructed to open a help ticket with our support department. A payment chargeback for services rendered will result in an additional charge of \$150 and will be subject to collection by an authorized collection agency.

7. **Non-Payment:** Any outstanding amounts not paid within a thirty (30) day period will be considered past due and will accrue interest at the rate of one and one-half percent (1.5%) per month. If any amount due under this Agreement is collected by or through an attorney or collection agency, Reseller shall pay all of Company's collection costs, including reasonable attorney's fees.
8. **Data:** Company agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity, backup, security, and retention. Reseller assumes ultimate responsibility for data integrity, retention, security, backup, and ownership. Data uploaded to the hosting services is considered public and to be published directly onto the open Internet; you are solely responsible for the data provided for this purpose. You are solely responsible for conveying to your customers the disposition of data by Tucows, including compliance with all relevant laws.
9. **Laws:** Reseller agrees that Ontario law shall govern this HSA.
10. **Indemnification:** Reseller agrees to indemnify and hold harmless Company, Company's affiliates, and Company representatives (including but not limited to 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 attorney's fees) brought by any third party under any theory of legal liability arising out of or related to Reseller's actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right
11. **Confidentiality:** Reseller agrees to keep any information pertaining to the Tucows Hosting product strictly confidential and to not disclose it to any third party without Tucows' express prior written consent. Reseller agrees that breach of confidentiality may result in irreparable harm and that Tucows shall be entitled to seek a relief allowable under law or in equity.
12. **Limitation of Liability:** Company shall not be liable to Reseller for harm caused by or related to Reseller's services or inability to utilize the services. Company shall not be liable to Reseller for lost profits, direct or indirect, special or incidental, consequential, punitive, or damages of any kind whether or not they were known or should have been known. Notwithstanding anything else in this agreement, the maximum aggregate liability of Company and any of its representatives (as defined in paragraph 10 above) under any theory of law shall not exceed the amount paid by the Reseller for services for the six months prior to the occurrence of the event(s) giving rise to the claim. All software, whether Tucows or third-party, is provided on an as-is basis and without warranty of any kind.
13. **Arbitration:** Any controversy or claim arising from service or related to this contract or breach therein in excess of \$5000.00 shall be settled by arbitration in accordance with the commercial arbitration rules of the JAMS. The resulting judgment rendered by a licensed arbitrator may be entered in any court having valid jurisdiction.

II. Acceptable Use Policy

Tucows is dedicated to the unrestricted free transmission of information via the Internet. This is a hosting services agreement; you are responsible for what you upload to the hosting service.

Notwithstanding anything found herein, Company follows all local, state, and federal laws pursuant to the services delivered over the Internet and directly related to our network and internal systems. Due to the myriad of possibilities in maintaining a network comprised of many servers, this document is intended to act as a guideline to service and not to be all-encompassing. In addition, we may update this document at any time and it will become effective immediately.

Direct Violations of AUP: The following list represents *per se* direct violations of this Acceptable Use Policy ("AUP") and will be subject to immediate redress under the methods of resolution as described in this, the AUP. Any violation of the AUP may result in immediate suspension of services, cancellation of account, removal, and/or reporting to the appropriate authorities.

- **Copyright Infringement:** Direct copyright infringement as defined and noted under Title 17, Section 512 of the United States Code is a direct violation of the AUP.
- **Unsolicited Email:** The sending of mass unsolicited email (spam) is a direct violation of the AUP. This includes the direct sending of such messages, support of such messages via web page, splash page, or other related sites, and the advertisement of such services.
- **Spam:** The use of our services to email users in an unsolicited manner is a direct violation of the AUP.
- **Email Bombing:** The sending, return, bouncing, or forwarding of email to specified user(s) in an attempt to interfere with or overflow email services is a direct violation of the AUP.
- **Proxy Email (Spam):** The use of dedicated services to proxy email unsolicited users is a direct violation of the AUP. Proxy email is defined as the use of dedicated services to act in concert with other services located inside and outside the network to achieve mass unsolicited email (spam) to unrelated third parties.
- **UseNet Spam:** The use of dedicated services to send, receive, forward, or post UseNet unsolicited email or posts is a direct violation of the AUP. This includes UseNet services located within the Company's network or unrelated third party networks.
- **Illegal Use:** Any use of services in direct contravention of applicable statutes is a direct violation of the AUP. This includes, but is not limited to: death threats, terroristic threats, threats of harm to another individual, multi-level marketing schemes, high yield investment plans (HYIP), "Ponzi schemes", invasion of privacy, "doxing", credit card fraud, racketeering, defamation, slander, and other illegal activities. This includes hosting, linking, and/or advertising via email, websites, or schemes designed to defraud.
- **Threats & Harassment:** Any use of services to promote or publish information that is misleading; objectionable; harmful; hateful; defamatory; derogatory or bigoted based on racial, ethnic, sexual preference, sexual identity, age, disability, or political grounds; that may otherwise cause injury, damage, or harm of any kind to any person or entity;

that violates or threatens to violate a person's privacy or property rights; or any activities that may in any way be harmful to minors is a direct violation of the AUP.

- **Gambling and Pornography:** Any use of services to promote, send, receive, forward, or post pornographic materials or materials relating to gambling, gaming, or other similar activities is a direct violation of the AUP.
- **Fraudulent Activities:** The Company prohibits utilizing services for fraudulent activities. Notification of fraudulent activities by verified third parties may result in violation of the AUP.
- **Denial of Service:** The Company absolutely prohibits the use of services for the origination or control of denial of service attacks (DoS) or distributed denial of service attacks (DDoS). Any relation to DoS or DDoS type activity is a direct violation of the AUP.
- **Terrorist Websites:** Use of services for the hosting of terrorist-related websites is a direct violation of the AUP. This includes but is not limited to sites advocating human violence and hate crimes based upon religion, ethnicity, gender, gender expression, sexual preference, sexual identity, or country of origin.
- **Distribution of Malware:** The Company prohibits the storage, distribution, fabrication, or use of malware including virus software, rootkits, password crackers, adware, keystroke capture programs, and other programs normally used in malicious activity. Programs used in the normal and ordinary course of business may be deemed acceptable on a case-by-case basis.
- **Phishing:** The Company strictly prohibits any activity associated with phishing or systems designed to collect personal information (name, account numbers, usernames, passwords, etc.) under false pretense. Splash pages, phishing forms, email distribution, proxy email, or any relation to phishing activities is a direct violation of the AUP.
- **Spoofing:** Manipulating identifiers such as email headers, IP addresses, or server names; imitating or impersonating another person or their email address; or creating false accounts for the purpose of sending spam is a direct violation of the AUP.
- **Child Abuse Material:** The Company has a zero-tolerance stance policy against child abuse material, related sites, and related content. The hosting of or linking to child abuse material or related sites or contact information is in direct violation of federal law and the AUP.

Disclosure to Law Enforcement: Occasionally, the Company is required by law to submit Reseller information to law enforcement officials when presented with a valid subpoena from a court with proper jurisdiction. Information requested is disclosed as directed pursuant to the subpoena. The Company utilizes great care in keeping Reseller information safe and private and will only release information described in the subpoena. The Company will notify Reseller of the request as allowed by the subpoena.

Reporting Violations of the Acceptable Use Policy: The Company accepts reports of alleged violations of the AUP; reports of alleged violations must be verified and include name, contact information, IP address, and description of the violation. The Company owes no duty to third parties reporting alleged violations due to lack of privity in contract law. The Company will

review all verified third party reports and will take appropriate actions as determined in its sole and absolute discretion.

Sole Discretion: The Company retains the right, at its sole discretion, to refuse new service to any individual, group, or business. The Company also retains the right to discontinue service with or without notice.