TERMS OF SERVICE

Revised January 7, 2019 – Prior versions can be found at https://www.liquidweb.com/about-us/policies/terms-of-service/

These Terms of Service, together with any applicable Service Descriptions (as defined in Section 1.1) and Orders (as defined in Section 1.2 below) and other attachment attached hereto or otherwise made a part of these Terms of Service (collectively, the "**Agreement**") is entered between Liquid Web, LLC ("**Liquid Web**") and the party entering into an Order with Liquid Web ("**Customer**") as may be identified in this Agreement (each a "**Party**" and collectively as the "**Parties**") as of date the Customer places the Order ("**Effective Date**"). The purpose of this Agreement is to provide a framework governing Customer's purchase of services from Liquid Web pursuant to one or more Orders (the "**Services**"). Liquid Web rejects any terms and conditions contained in Customer's forms that are additional to or different from those set forth in Liquid Web's Order, Services Descriptions, or in these Terms of Service. Liquid Web and Customer agree as follows:

1. **AGREEMENT, ORDERS AND SERVICES**

    1.1. **Agreement; Service Descriptions.** This Agreement contains general contractual terms for all Services to be provided by Liquid Web pursuant to one or more orders (each, an "**Order**"). Additional terms and conditions that apply to each type of Service may be set forth in service descriptions, which will be published on Liquid Web's website or otherwise made available by Liquid Web to Customer (each a "**Service Description**"), and/or in the applicable Order. Liquid Web may from time to time make changes to the Service Descriptions to add new or improved Services, substitute Services for improved performance or simply discontinue a Service (collectively "**Updates**"). Customer shall periodically check the Liquid Web website for such Updates.

    1.2. **Ordering Procedures.** Customer may at any time request for Liquid Web to provide a Service by submitting to Liquid Web an Order, either online, by phone, by online chat, or in a form provided by Liquid Web. Each Order is incorporated into the Agreement and will contain applicable pricing and payment terms, Service Level Agreement (as defined in Section 1.3), if any, and other transaction-specific provisions. In the event of any conflict between this Agreement and the terms of any of the Service Descriptions and the applicable Order(s), precedence will be given in the following order: (a) the Order, but solely with respect to the Services covered by that Order; (b) the Service Description, but solely with respect to the Service covered by the Services Description; and (c) this Agreement.

    1.3. **Support and Service Levels.** Liquid Web will provide technical support services for the Services ("**Support**") to its Customers via phone, email and live chat based on the level of Support purchase by Customer pursuant to an Order. Detailed descriptions of the various Support levels are set forth in the Support Service Description available at https://www.liquidweb.com/support/compare. Support is only available to Customer; Liquid Web has no obligation to provide Support to any other party. In addition, Liquid Web will make the Services available in accordance with the applicable service levels set forth at https://www.liquidweb.com/about-us/policies/ (the "**Service Level Agreements**"). Liquid Web may from time to time make changes to the Support or Service Level Agreements, and Customer shall periodically check the Liquid Web website for such changes.

    1.4. **Third Party Products.** Liquid Web may make available to Customer from time to time, certain third party products, including hardware and software (collectively, the "**Third Party Products**") and, if purchased by Customer, such Third Party Products are non-refundable upon termination of the Agreement. Customer acknowledges and agrees that Liquid Web is reselling such Third Party Products and that it neither provides any warranty related to nor assumes any liability for such Third Party Products. To the extent permitted by the Third Party Product manufacturer, Liquid Web will pass through to Customer the manufacturer's warranties related to each Third Party Product and will use commercially reasonable efforts to facilitate utilization by Customer of such warranties. Customer shall abide by all terms and conditions governing the use of such Third Party Products.

    1.5. **Ownership.** Customer shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any materials made available by Liquid Web. Customer shall not use any Services or materials provided by Liquid Web after the expiration or termination of the Order under which the same was provided.

    1.6. **Subcontractors.** Liquid Web may use affiliates and third party service providers to perform all or any part of the Services, but Liquid Web remains responsible under the Order for Services performed by any affiliate or third party service provider to the same extent as if Liquid Web performed the Services.

2. **CHARGES AND PAYMENT TERMS**

2.1. Fees. Customer shall pay to Liquid Web all recurring and non-recurring fees for the Services and Third Party Products ("**Fees**") in the amounts set forth on the applicable invoice. Liquid Web may increases fees for the Services provided under an Order upon thirty (30) days' advance notice as follows: (a) for Services provided on a month-to-month term, Liquid Web may increase Fees effective the first day of the next month following the notice period; and (b) for Services provided over a term greater than one month, Liquid Web may increase fees for the Services provided under an Order as of the first day of the next Renewal Term.

2.2. Bandwidth Fees. Bandwidth usage for bundled bandwidth packages related to Internet data transfers will be calculated based upon outgoing bandwidth transfer only. If Customer's actual data transfer usage exceeds the amount of Customer's bandwidth package, Customer will be charged a bandwidth overage Fee as specified in the applicable Order. When using the Liquid Web provided Content Delivery Network ("**CDN**"), Customer is responsible for all bandwidth costs associated with the delivery of content over the public Internet, including any content delivery caused by unauthorized use of Customer's CDN connection. Liquid Web will not enable "hot-linking" capability by default. In the event "hot-linking" capability is activated at Customer's request, Customer remains responsible for all network usage.

2.3. Payment Terms. Unless other payment methods have been approved, Liquid Web will charge Customer's credit card monthly, without invoice. If another method of payment has been approved, Liquid Web shall forward via electronic mail a copy of the current invoice to Customer no later than two (2) days after the invoice date to the email address(es) designated on page one (1) of this Agreement ("**Billing Email Address**"). Customer must provide Liquid Web thirty (30) days written notice of any changes to its Billing Email Address. All charges shall be due and payable by Customer to Liquid Web within thirty (30) days of the invoice date. Customer waives the right to dispute any charges not disputed within such thirty (30) day period. Billing shall commence on the first day the Services are made available to Customer. Monthly recurring charges shall be invoiced monthly. Non-recurring charges will be included on the invoice for the applicable installation or Service changes as directed by Customer.

2.4. Late Payments. Liquid Web may suspend all Services provided to Customer if Customer fails to pay any Fees when due. In addition, if any undisputed amount is not paid when due, Liquid Web may impose a late charge in an amount equal to one and one-half percent (1 ½%) (or the maximum legal rate, if less) of the unpaid balance per month. In the event a payment is received by Liquid Web and is returned for insufficient funds or bank charges, Customer shall reimburse Liquid Web for all associated processing charges as well the late charge to the extent applicable. In the event that non-disputed payments are received late or returned by insufficient funds more than three (3X) times annually, Liquid Web may require that Customer establish a deposit and or pay with guaranteed funds. Customer will reimburse Liquid Web for all expenses Liquid Web incurs, including reasonable attorney fees, in collecting any amounts past due under this Agreement.

2.5. Credit Approval and Deposit.

2.5.1. Customer acknowledges that delivery of the Services is subject to the continuing approval by Liquid Web of Customer's creditworthiness. Customer shall furnish financial information as Liquid Web may from time to time reasonably request to determine Customer's creditworthiness.

2.6. Taxes and Assessments. Customer is responsible for the payment of all governmental assessments, surcharges, and fees pertaining to its use of the Services (other than taxes on Liquid Web's net income). Liquid Web shall not invoice Customer for taxes if Customer provides Liquid Web with, and maintains, valid and properly executed certificate(s) of exemption for the taxes. Such certificates of exemption must be reasonably acceptable to Liquid Web. Customer is responsible for all taxes up until the time a valid certificate of exemption is provided to Liquid Web. If Customer fails to maintain the required tax exemption certificate(s), Liquid Web shall back-bill Customer for all applicable taxes. The process for maintaining this information is described at https://www.liquidweb.com/kb/updating-your-account-profile/#adrandtax.

2.7. Shipping. All shipments of Third Party Products by Liquid Web to Customer are EXW point of shipment. Any insurance coverage, transportation costs and all other expenses applicable to shipment from Liquid Web to Customer's identified point of delivery will be the responsibility of the Customer. Customer grants Liquid Web a security interest in and to the Third Party Products as security for payment in full of the purchase price. Customer authorizes Liquid Web to file and/or record any documents it deems necessary to perfect this security interest.

2.8. Refunds. Except as otherwise provided herein or in the applicable Service Level Agreement, Customer shall not be entitled to any refund for any Services purchased hereunder. Setup Fees are not refundable.

3. RESPONSIBILITIES OF CUSTOMER

3.1. Equipment, Hardware and Software.

3.1.1. Customer is responsible for the installation, operation, and maintenance of hardware or software not provided by Liquid Web, including ensuring the same is up to date. Liquid Web is not responsible for the transmission or reception of information by such hardware or software.

3.1.2. Customer is responsible for the selection, use and compatibility of hardware or software not provided by Liquid Web. If hardware or software not provided by Liquid Web impairs Customer's use of the Services, Customer is nonetheless liable for payment for Services. If Liquid Web notifies Customer that the hardware or software not provided by Liquid Web is causing or is likely to cause hazard, interference, or service obstruction, Customer must eliminate the hazard, interference, or service obstruction. Liquid Web may suspend the provision of Service until the hazard, interference, or service obstruction is corrected. If requested by Customer, Liquid Web may, at its then-current rates, assist Customer with resolving technical difficulties caused by hardware or software not provided by Liquid Web. If any changes in Service cause hardware or software not provided by Liquid Web to become obsolete, require modification or alteration, or otherwise affect performance of such hardware or software, Customer, not Liquid Web, is responsible for modifying, altering or replacing the hardware or software.

3.1.3. If Customer provides its own equipment to interface with the Services, Customer is responsible for the installation, maintenance, and configuration of the equipment.

3.1.4. For the sole purpose of enabling Customer to use Services, Liquid Web grants to Customer a non-exclusive and non-transferable license to use software that may be provided with or included in the Services. Liquid Web or its suppliers retain title and property rights to Liquid Web-provided software and equipment, whether or not it is embedded in or attached to Customer's hardware. Customer neither owns nor will it acquire any claim or right of ownership to (a) any Liquid Web-provided equipment not purchased by Customer; (b) any software (including the original media and all subsequent copies of the software, regardless of the media's form, including product keys provided by third parties whereby the keys are for Customer's exclusive use and continued use of such keys beyond termination of any Service order or this Agreement is prohibited) and associated documentation (including copies); and (c) any IP addresses assigned to Customer.

3.1.5. Liquid Web is responsible for maintaining its software and hardware in accordance with the terms of this Agreement. Customer agrees not to open, alter, misuse, tamper with or remove the software and equipment required to operate the Service. Customer will not remove any markings or labels or serial numbers from the equipment. If the equipment is damaged, destroyed, lost or stolen while in Customer's possession, Customer shall be liable for the cost of repair or replacement of such equipment. Customer will safeguard the equipment from loss or damage of any kind, and will not permit anyone other than an authorized representative of Liquid Web to perform any work on the equipment. Prior to installation of the hardware, Customer shall notify Liquid Web of any special requirements regarding the placement of the hardware at Customer's premises to accommodate all Customer's employees, agents and contractors with a physical disability who are tasked with monitoring such hardware in order to perform their job functions. Any request, post installation, to relocate the hardware will result in additional non-recurring charges.

3.2. **Compliance.** Customer shall obtain all applicable licenses, permits and approvals for the use of the Services or Third Party Products required by any governmental agency, foreign or domestic, having jurisdiction over the transaction. Customer and its users shall use the Services in compliance with all applicable state, federal, or international laws, statutes or codes, specifically including data protection and privacy laws, as well as laws relating to unsolicited commercial electronic messages.

3.3. **Acceptable Use.** Customer is responsible for all acts and omissions of its users in connection with receipt or use of the Services, and Customer and its users shall at all times abide by Liquid Web's Acceptable Use Policy, available at https://www.liquidweb.com/about-us/policies/acceptable-use-policy. Customer will not use the Services or Third Party for life support, life sustaining, nuclear or other applications in which failure of such Services or Third Party Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. Customer agrees that Liquid Web is not liable, in whole or in part, for any claim or damage arising from use of Services or Third Party Products in such applications.

4. DATA PROTECTION AND SECURITY

4.1. **Customer Data**. Customer is solely responsible for the security and content of all Customer data stored in Liquid Web's hosted environment and any data, applications or third party services run in or through the Liquid Web provided environment ("**Customer Data**"), and Customer Data is and at all times shall remain Customer's exclusive property.

4.2. **Legal Requirements**. Customer is solely responsible for determining if any Customer Data must comply with any law, standards, and policies, including without limitation, those related to data privacy and security (collectively referred to herein as the "**Legal Requirements**") and ensuring that the Customer Data does comply with all applicable Legal Requirements. Customer acknowledges and agrees that Liquid Web has no way of reviewing Customer Data.

4.3. **Security**. Customer shall encrypt at the application level all Sensitive Customer Data. "**Sensitive Customer Data**" means Customer Data that is required to be treated as confidential under state or federal law or under Customer's contractual obligations to others Information. Customer shall promptly notify Liquid Web upon becoming aware of any data breach or unauthorized access to Liquid Web's network or servers and accounts. Customer will take all commercially reasonable steps to cooperate with Liquid Web's investigation and resolution of the reported breach or unauthorized access.   Notwithstanding the foregoing, Customer acknowledges and agrees that Liquid Web makes no representation or warranty regarding the security of its Services.

4.4. **Access and Use.** Liquid Web is not responsible to Customer for unauthorized access to Customer Data or unauthorized use of the Services through authorized or unauthorized access provided by Customer to third parties. Customer is responsible for the use of the Services by any of Customer's employees, affiliates, officers, directors, shareholders, agents or representatives, or any other third party given access to the Service, and any third party who gains access to Customer Data or Services as a result of Customer's failure to use reasonable security precautions, even if such access was not authorized by Customer.

4.5. **Backups**. Customer shall be responsible maintaining all backups for all Customer Data on Liquid Web's servers. In the event Liquid Web provides backup assistance on its servers, it is provided, without additional charge, as a courtesy ("**Courtesy Support**") to Customer. Liquid Web has no liability for any lost or corrupted Customer Data resulting from the provision of Courtesy Support.

4.6. **HIPAA and HITECH Act**. Customer shall immediately notify Liquid Web if any of the data in the applicable Service environment includes Protected Health Information ("PHI"), as that term is defined Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, as amended. If the data does include PHI, Customer and Liquid Web shall enter into a Business Associate Agreement ("BAA").

4.7. **Payment Card Industry – Data Security Standards ("PCI-DSS")**. If, as necessary to perform its obligations under the Agreement, Liquid Web possesses or otherwise stores "cardholder data" (as that term is defined by the Payment Card Industry Data Security Council https://www.pcisecuritystandards.org) on behalf of Customer, Liquid Web and Customer agree that each Party is responsible, as may be designated in the applicable Service Description, for those certain PCI-DSS requirements as applicable.

4.8. **EU General Data Protection Regulation**. Customer shall notify Liquid Web if it intends to use Liquid Web Services with Customer Data that is subject to protection under General Data Protection Regulation 2016/679 ("**GDPR**"). Such notification shall require the Parties execute a Data Protection Addendum ("**DPA**") under which Liquid Web will be a Processor and Customer the Controller as those terms are defined under the GDPR. Customer may not utilize any Services with Customer Data that is subject to GDPR protection until such time as the Parties have executed a DPA.

5.   **REPRESENTATIONS, WARRANTIES AND COVENANTS**

5.1. **Mutual Representations and Warranties.** Each Party represents, warrants and covenants that, as of the Effective Date and continuing throughout the term of this Agreement:

5.1.1. It is an organization duly formed, validly existing and in good standing under the laws of the state in which it is formed, and in good standing in each other's jurisdiction where the failure to perform in good standing would have a material adverse effect on its business or its ability to perform its obligations hereunder.

5.1.2. It has all necessary organizational power and authority to enter into this Agreement and each Order and to perform its obligations hereunder, and the execution of this Agreement and each Order and consummation of the transactions contemplated thereby have been duly authorized by all necessary organizational actions on its part.

5.1.3. This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms.

5.1.4. It shall comply with all laws in connection with the Services and otherwise under this Agreement.

5.2. **Liquid Web Representations, Warranties and Covenants.** Liquid Web represents, warrants and covenants that:

5.2.1. It will perform the Services in a diligent, professional and workmanlike fashion using an appropriate number of properly trained and qualified individuals.

5.2.2. It will provision the Services to operate within the technical standards of performance or service levels, if any, set forth in the applicable Service Description, Service Level Agreement, or Order. Customer's sole and exclusive remedy for any failure to meet the applicable technical standards of performance or service levels shall be as specified in the applicable Service Description, Service Level Agreement, or Order.

5.3.   Disclaimer of Warranties. Customer assumes total responsibility for use of the Services, Third Party Products, and any applicable equipment. Liquid Web has no responsibility for the security, loss, intrusion or unauthorized access of stored data or any loss or damage caused by any action, omission or failure to comply with the terms of this Agreement by Customer. ALL PRODUCTS AND SERVICES PROVIDED OR OTHERWISE MADE AVAILABLE BY LIQUID WEB ARE PROVIDED ON AN "AS-IS" BASIS, AND LIQUID WEB MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS TO ANY SERVICE, THIRD PARTY PRODUCT, OR EQUIPMENT PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY LIQUID WEB ARE HEREBY EXCLUDED AND DISCLAIMED.

6.   CONFIDENTIAL INFORMATION

6.1.   Definitions. As to any particular Confidential Information, the "**Discloser**" is the Party disclosing the Confidential Information and the "**Recipient**" is the Party receiving the Confidential Information. "**Confidential Information**" means any information (whether tangible or intangible, printed, electronic, or otherwise) and items embodying information (including graphs, photographs, samples, working models, and prototypes) at any time furnished by Discloser to Recipient or to which Recipient is exposed during the term of this Agreement, including, without limitation, (a) information concerning Discloser's business and business plans, (b) financial information concerning Discloser and its affiliates, (c) information concerning Discloser's pending patents or other trade secrets, (d) Discloser's sketches, drawings, designs and specifications, (e) Discloser's concepts, ideas, inventions, know-how, processes, apparatus, equipment, algorithms and formulas, and (f) information from third parties that Discloser is obligated to treat as confidential. Customer Proprietary Network Information ("**CPNI**"), as defined by United States Code 47 U.S.C. § 222(h) (1), shall be considered to be the Confidential Information of Customer. Customer's data stored at Liquid Web's data center(s) or stored on or processed on Liquid Web's systems shall be considered to be Confidential Information. All other Confidential Information provided in written or electronic form must be clearly marked "Confidential." In the case of Confidential Information provided orally, a written memorandum of such information clearly marked "Confidential" must be delivered to Recipient within thirty (30) days of the disclosure.

6.2.   Restrictions on Use; Non-Disclosure. Except as otherwise expressly permitted in writing by an authorized representative of Discloser, Recipient agrees that it will not (a) use the Confidential Information of Discloser for any purpose other than the purpose for which Discloser disclosed the information; or (b) disclose or reveal Confidential Information of Discloser to any person or entity other than its employees, directors, officers and consultants who have a need to know to further the purpose of this Agreement and are subject to legally binding obligations of confidentiality and non-use no less restrictive than those contained in this Agreement. During the term of this Agreement, Customer will designate an account representative who has the authority to request Customer's CPNI under this Agreement through its dedicated Liquid Web account representative.

6.3.   Exceptions. The obligations set forth in this Section 6 above shall not apply to Confidential Information that (a) before the time of its disclosure was already in the lawful possession of the Recipient; (b) at the time of its disclosure to Recipient is available to the general public or after disclosure to Recipient by Discloser becomes available to the general public through no wrongful act of the Recipient; or (c) Recipient demonstrates to have been lawfully independently developed by Recipient without the use of or reliance upon any Confidential Information of the Discloser and without any breach of this Agreement. In the event Customer and Liquid Web enter into a separate Non-Disclosure Agreement ("**NDA**"), then such NDA shall be incorporated into this Agreement by reference herein, and if any terms and conditions of such NDA are in conflict with the terms and conditions herein, then the NDA shall supersede the Confidentiality terms and conditions in this Section 6, excluding Liquid Web's CPNI obligations as defined herein.

6.4.   Ownership; No License. Each Party shall retain ownership of all rights, including all intellectual property rights, in its Confidential Information. Nothing in this Agreement shall be deemed, by implication or otherwise, to convey to Recipient any right under any patent, patent application, invention, or other proprietary right owned by Discloser or anyone associated with Discloser.

6.5.   Disclosures Required by Law. If Recipient becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then Recipient shall notify Discloser of the requirement promptly in writing (if legally permitted) so that Discloser may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms hereof, then Recipient shall furnish only that portion of the information which Recipient is advised by written opinion of counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information.

6.6.   Duration. The obligations set forth in this Section 6 shall survive termination of this Agreement for a period of three (3) years.

6.7.   Disposal of Confidential Information. Recipient agrees to return to Discloser all copies of Confidential Information promptly upon Discloser's request at any time. If return is impossible as to any portion of the Confidential Information, then

Recipient shall certify to Discloser promptly that all such Confidential Information of Discloser, including all copies thereof, has been totally and permanently destroyed.

6.8. **Remedies**. The Parties acknowledge and agree that a breach of this Section 6 by either Party will cause continuing and irreparable injury to the other's business as a direct result of any such violation, for which the remedies at law will be inadequate, and that Discloser shall therefore be entitled, in the event of any actual or threatened violation of this Section by Recipient, and in addition to any other remedies available to it, to a temporary restraining order and to injunctive relief against the other Party to prevent any violations thereof, and to any other appropriate equitable relief.

7. INDEMNIFICATION

7.1. **Indemnification by Liquid Web.** Liquid Web shall indemnify, defend, and hold harmless Customer and its officers, directors, agents and employees from and against any and all demands, causes of action, losses, damages, fines, penalties, and claims, and all related costs and expenses (including reasonable attorneys' fees) (collectively referred to as "**Losses**") arising any third party claim that Customer's use of the Services not in violation of this Agreement infringes or misappropriates any valid, U.S. patent, copyright, or trade secret of such third party. In addition to Liquid Web's indemnification obligations set forth in this Section 7.1, in the event of a claim or threatened claim under this 7.1 by a third party, Liquid Web may, at its sole option, (1) revise the Services up to and including termination of this Agreement upon ten (10) days' notice so that they are no longer infringing, (2) obtain the right for Company to continue using the Services, or (3), in the event neither of the foregoing are reasonable, terminate this Agreement and refund to Customer a pro-rata amount of any pre-paid Services not yet receives as of the date of termination. THIS SECTION 7.1 REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF LIQUID WEB AND THE EXCLUSIVE REMEDY OF CUSTOMER RELATED TO ANY INFRINGEMENT OR MISAPPROPRIATION CLAIMS OF A THIRD PARTY.

7.2. **Indemnification by Customer.** Customer shall indemnify, defend and hold harmless Liquid Web and its officers, directors, agents and employees, from and against any and all Losses arising out of or in any manner relating to: (a) violation of any law by Customer; (b) any claim for withholding or other taxes that might arise or be imposed due to this Agreement or the performance hereof; (c) damage to property or personal injury (including death) arising out of the gross negligence or willful acts or omissions of Customer; or (d) claims by a third party arising out of or related to the use or misuse of any Service or Third Party Products.

7.3. **Indemnification Procedure.** The Party seeking indemnification under this section shall promptly, and in writing, notify the other Party of any claim as to which it intends to seek indemnification under this Agreement, and shall take such action as may be necessary to avoid default or other adverse consequences. The indemnified Party shall provide cooperation and participation of its personnel as required for the defense at the cost and expense of the indemnifying Party.

8. LIMITATIONS OF LIABILITY

8.1. **Limit on Types of Damages Recoverable.** NEITHER PARTY NOR ITS AFFILIATES, SUBSIDIARIES, EMPLOYEES, CONTRACTORS, OR SUPPLIERS, SHALL BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LIQUID WEB BE LIABLE FOR ANY DAMAGES RELATED TO ANY THIRD PARTY PRODUCT.

8.2. **Limit on the Amount of Damages Recoverable**. Except as may be provided in an applicable Service Level Agreement, Liquid Web's liability to Customer and its respective officers, directors, employees, agents, contractors, successor and assigns arising under or related to this Agreement and the Services provided hereunder shall be limited in all cases to direct damages which shall not exceed the amount of Fees paid by Customer under the applicable Order for the Services during the six (6) month period immediately preceding the event giving rise to the claim for damages.

8.3. **No Liability for Certain Actions**. Liquid Web shall not be liable to Customer for any claims or damages resulting from or caused by (a) unauthorized access to transmission facilities or premises equipment, or for unauthorized access to or alteration, theft, or destruction of data files, programs, procedure, or information through accident, wrongful means or devices, or any other method where such unauthorized access is due to Customer's fault, negligence or failure to perform Customer's responsibilities; (b) Customer's fault, negligence or failure to perform Customer's responsibilities; (c) claims against Customer by any other party; (d) any act or omission of any other party; or (e) equipment or services furnished by a third party. Liquid Web is not responsible for Customer Data or the content of any other information transmitted or received through the Services.

8.4. **Limitation of Actions**. Neither Party may bring any action, regardless of form, arising out of or relating to an Order or this Agreement more than three (3) months from the date on which the cause of action arose.

9. TERM

9.1. Agreement. This Agreement shall commence on the Effective Date and continue until the last Order expires or is terminated, unless this Agreement is sooner terminated in accordance with the terms of Section 10 (**Termination**) below.

9.2. Service Term. An individual Services term shall commence on the Effective Date and continue for the period of time specified on its Order (the "**Initial Term**"), unless sooner terminated in accordance with the terms of Section 10 (**Termination**) below. Thereafter, the Agreement will automatically renew for successive one-year periods, or, if no such term is specified, the Agreement shall continue in effect on a month-to-month basis at the then current month-to-month rates (the "**Renewal Term**") unless either Party provides the other Party with written notice of its intention not to renew at least thirty (30) days before expiration of the Initial Term. The Initial Term and Renewal Term are sometimes individually and collectively referred to as the "**Service Term.**"

10. TERMINATION

10.1. Termination for Cause. Either Party shall have the right to terminate this Agreement and/or any Order upon written notice to the other Party:

10.1.1. If the other Party defaults in the performance of any of its material obligations under this Agreement and such default continues for a period of thirty (30) days after receipt of written notice specifying the nature of the breach. In the case of nonpayment of fees, the cure period shall be ten (10) days.

10.1.2. If the other Party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization (individually or collectively "**Bankruptcy Proceedings**"). For the avoidance of doubt, such Bankruptcy Proceedings shall not be subject to a cure period as described in Section 10.1.1.

10.1.3. If Customer defaults in the performance of any of its material obligations under this Agreement and fails to cure such default within the cure period specified above, Liquid Web may at its sole option do any or all of the following: (a) cease accepting or processing Orders and/or suspend Services; (b) cease all electronically and manually-generated information and reports; (c) draw on any letter of credit, security deposit or other assurance of payment and enforce any security interest provided by Customer; (d) terminate this Agreement and/or the applicable Order; or (e) pursue such other legal or equitable remedy or relief as may be available to Liquid Web. A nonpayment or other default by Customer resulting in the termination of the Agreement and/or applicable Order, shall entitle Liquid Web to collect from Customer the applicable early termination charges as described under Section 10.4, in addition to pursuing any other available remedy.

10.2. Termination for Convenience. Customer shall have the right to terminate any Order at any time for convenience by providing thirty (30) days' written notice to Liquid Web and paying Liquid Web the early termination charges specified in Section 10.4 below. Termination shall be effective and the affected Services will be discontinued within thirty (30) days after Liquid Web receives the completed termination notice.

10.3. Change in Regulatory Requirements. If the Federal Communications Commission, a state Public Utilities or Service Commission or a court of competent jurisdiction, issues a rule, regulation, law or order which has the effect of canceling, changing or superseding any material term or provision of this Agreement (collectively, "**Regulatory Requirement**"), then this Agreement shall be deemed modified in such a way as the Parties mutually agree is consistent with the form, intent or purpose of this Agreement and is necessary to comply with such Regulatory Requirement. Should the Parties be unable to agree on modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then upon written notice, either Party may, to the extent practicable, terminate that portion of this Agreement impacted by the Regulatory Requirement, or if the entire Agreement is impacted, either Party may terminate the Agreement with no further obligation or liability hereunder, and Customer shall not be liable for an early termination charge hereunder.

10.4. Early Termination Charge. If the Services are cancelled or terminated prior to the expiration of the Service Term for any reason other than: (a) by Customer in accordance with the terms of the Order or Section 10.1, then Customer shall pay Liquid Web an early termination charge equal to:

10.4.1. for flat rated Services: one hundred percent (100%) of the monthly recurring charges for the Services multiplied by the number of months remaining in the Service Term;

10.4.2. for prepaid Services: one hundred percent (100%) of the prepaid amount;

10.4.3. any non-recurring fees Liquid Web incurs from other suppliers in connection with cancellation of the Services; and

10.4.4. any outstanding invoices still owed by Customer.

Such payment shall be due within sixty (60) days of termination.

10.5. Suspension. In addition to the rights and remedies set forth in this Agreement, Liquid Web may suspend some or all of the Services without liability to Customer if: (a) Customer fails to pay the applicable fees for the Services when due; (b) Liquid Web determines that the Services are being used, have been used, or will, with commercially reasonable certainty, be used in breach of this Agreement; (c) Customer fails to cooperate with an investigation of any suspected breach of this Agreement; (d) Liquid Web reasonably believes that the Services have been accessed or utilized in any way by a third party without Customer's consent; or (d) suspension of services is reasonably necessary to protect Liquid Web's hosting environment. Liquid Web will use commercially reasonable efforts to provide Customer advance notice of a suspension and a chance to cure the violation on which the suspension is based, unless Liquid Web determines, in its reasonable judgment, that an immediate suspension is necessary to protect Liquid Web's network and its customers' from an imminent, significant operational, network integrity or security risk. Suspensions based on Customer's breach of this Agreement will not relieve Customer's obligation to pay for the suspended Services during the period of suspension. Any suspension imposed under this Section will be lifted upon Customer's cure of the breach causing the suspension. In the event the Customer is unable to cure the breach within fifteen (15) days of notice from Liquid Web, the suspension may be treated as a termination for Cause. During the suspension period, Liquid Web shall have the right to deny access to, and/or, destroy data stored on the compromised server or account. Liquid Web may at its own discretion allow access to a suspended account.

11. GENERAL PROVISIONS

11.1. Publicity. Except as otherwise provided herein, neither Party will use the other Party's name, logo or service marks, for any purpose, including press releases, without the other Party's prior written consent. Notwithstanding the foregoing, Customer may use Liquid Web's name and logo to positively publicize that it uses Liquid Web's Services, and Liquid Web may include Customer's name in its customer list, website, partner portal, and publications.

11.2. Assignment and Binding Nature. Customer shall not assign, voluntarily or by operation of law, any of its rights or obligations under this Agreement without the prior written consent of Liquid Web. Liquid Web may upon prior written notice to Customer, assign all of its rights and obligations under this Agreement to any entity which effects a merger transaction with Liquid Web or otherwise acquires all or substantially all of the capital stock or assets of Liquid Web. Subject to the foregoing, this Agreement shall be binding on the Parties and respective successors and assigns.

11.3. Notices. Except as otherwise provided herein, any notice or other communication between the Parties hereto regarding the matters contemplated by this Agreement may be sent by U.S. mail (first-class, airmail or express mail), commercial courier, facsimile or electronic mail. Any written notice required to be sent under Section 10 (Termination) must be sent by U.S. mail (first-class, airmail or express) or commercial courier. Notices to Liquid Web shall be sent to: Liquid Web, LLC, 2703 Ena Drive, Lansing MI 48917, Attn: General Counsel, and notices to Customer shall be sent to the contact information set forth in Customer's Order, or at such other addresses as either Party may designate in writing.

11.4. Amendments. Liquid Web may update, modify, add, or delete this Agreement at any time and such update shall be reflected on Liquid Web's website. Customer's continued use of the Services following any change to the Agreement constitutes acceptance of the Agreement.

11.5. No Third-Party Beneficiaries. Nothing in this Agreement creates, or will be deemed to create, third-party beneficiaries of or under this Agreement. CUSTOMER AGREES THAT LIQUID WEB HAS NO OBLIGATION TO ANY THIRD PARTY BY VIRTUE OF THIS AGREEMENT.

11.6. Relationship of Parties. Nothing contained in this Agreement shall be construed to create a partnership, agency, joint venture, or employer/employee relationship between the Parties. Neither Party has the authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other Party or to bind such other Party in any way. Each Party shall be responsible for the actions of, and its obligations to, its own personnel, contractors, and subcontractors including obligations relating to the following, as applicable: payments, wages, taxes, withholding, insurance (including, without limitation, workman's compensation), and hours and conditions of employment.

11.7. Force Majeure. Neither Party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such Party's reasonable control, including, but not limited to: acts of God, fire, flood, storm, explosion, terrorism, vandalism, or other similar catastrophes; any law, order, regulation, direction, action, or request of any governmental entity or agency, or any civil or military authority; national emergencies, insurrections, riots, wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties ("**Force Majeure Event**"). In the event Liquid Web is unable to deliver any Service as a result of a Force Majeure Event, Customer shall not be obligated to pay Liquid Web for the affected Service for so long as Liquid Web is unable to deliver that Service.

11.8. Legal Expenses. If any action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged or actual dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

11.9. Waiver. The failure by any Party to this Agreement to insist upon strict performance of any provision of this Agreement will not constitute a waiver of that provision. All waivers must be in writing to be enforceable hereunder.

11.10. Interpretation. The descriptive headings of this Agreement and of any Service Description or Exhibit under this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement. As used herein, "include" and its derivatives ("including", "e.g.") shall be deemed to mean "including, but not limited to." Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisers participated in the preparation of this Agreement.

11.11. Severability. If any provision of this Agreement shall be declared invalid, illegal or unenforceable under applicable law, said provision shall be ineffective only to the extent of such declaration and such declaration shall not affect the remaining provisions of this Agreement. In the event that a material and fundamental provision of this Agreement is declared illegal, invalid or unenforceable under applicable law, the Parties shall negotiate in good faith respecting an amendment hereto that would preserve, to the fullest extent possible, the respective rights and obligations imposed on each Party under this Agreement as originally executed.

11.12. Executable by Electronic Means. This Agreement may be executed in two or more counterparts (including by means of faxed or emailed signature pages), each of which will be deemed an original, and all of which together will constitute one and the same instrument. Photocopies, facsimile transmissions and other reproductions of this executed original (with reproduced signatures) will be deemed original counterparts of this Agreement. The Parties consent and agree the Agreement and any Order may be entered into electronically by way of electronic signatures (for example, by electronically clicking a box confirming agreement or utilizing third party software such as DocuSign), and any such electronic signatures shall be binding and treated as original signatures. In the event Liquid Web requires a correction or clarification to an executed Order prior to the Service's first day of availability, an email communication from Customer may be utilized as an acceptable method of approval for any such correction or clarification and shall be incorporated as part of the Order.

11.13. Governing Law; Jurisdiction. This Agreement shall be governed by and interpreted according to the laws of the State of Michigan (without regard to its conflict of law principles), and the Parties hereby consent to the exclusive jurisdiction of the state or federal courts in the State of Michigan to adjudicate any dispute arising under or in connection with this Agreement. Any such dispute shall be brought before the courts with jurisdiction over Ingham County, Michigan. The Parties hereby waive any objection based on inconvenient forum.

11.14. Tariffs. Subject to the terms set forth in this Agreement, Liquid Web hereby incorporates by reference those provisions of its tariffs that govern the provision of any of the services or facilities provided hereunder. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this Agreement shall prevail.

11.15. Export Matters. Customer represents and warrants that Customer is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons to whom Liquid Web is legally prohibited to provide the Services. Customer may not use any Service for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, nor may Customer provide administrative access to any Service to any person (including any natural person or government or private entity) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

11.16. Entire Agreement. This Agreement, together with all Service Descriptions and Orders, embodies the entire agreement and understanding between Liquid Web and Customer with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to the subject matter of this Agreement. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

11.17. Survivability. Each Party's obligations under Section 5 (Representations, Warranties and Covenants), Section 7 (Indemnification), and Section 8 (Limitation of Liability) and shall survive the expiration or termination of this Agreement.