

SGC Hosting Service Terms and Conditions

Use of Spectrum Global Communications Hosting Services or "3rd Party Hosting Service" constitutes absolute acceptance of the following Terms and Conditions.

- Any and all notices delivered to the "Service Provider" should be delivered to this address/fax #/or billing@thespectrumgroup.ca and be acknowledged.
- Hosting Service:** "SERVICE PROVIDER" agrees to provide hosting services utilizing "Industry Best Practices" in ensuring data integrity while stored on our Servers, it assumes no liability for data loss or corruption. Data and system state restoration will be performed at the request of the "Client" and will be charged at our applicable billing rates in effect for the plan selected and based on your billing relationship with us. If data (backups or restores are ever requested on physical media, "Client" is responsible for the cost of the media. Restoration services by "SERVICE PROVIDER" either onsite or remote are provided at "SERVICE PROVIDER" standard rates as provide for in applicable plan. "SERVICE PROVIDER" Technical support staff is available for general support during operational hours of 8:00am to 5:00pm Monday to Friday not including statutory holidays or weekends.

Where 3rd party services are utilized, 3rd party terms and conditions shall apply. Such provisions shall be provided upon request by "Client".

DISCLAIMER

- ALL SERVICES PROVIDED BY "SERVICE PROVIDER" or 3rd Party IS PROVIDED TO YOU "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, OR NON-INFRINGEMENT.
 - "SERVICE PROVIDER" or 3rd Party MAKES NO REPRESENTATIONS OR WARRANTIES THAT (I) THE SERVICES WILL MEET YOUR REQUIREMENTS; (II) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; AND (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE.
- Payment:** a) The "Client" is responsible for paying to "SERVICE PROVIDER" the initial cost for licensing/Administration/Setup/Provisioning and monthly cost as per this agreement. b) Pay per user, or pay based on storage or feature, as indicated in plan, are payable in the month the change was made (pro-ration where possible only), c) when a "plan upgrade" is required (for example to meet plan thresholds the "Client" will automatically be moved up to the next level of service in the following month if applicable. (Customer notification and approval will be sought whenever possible).d) Non-payment of invoices may result in interruption of service until outstanding invoices are paid in full. e) The "Client" hereby submits to any appropriate credit checks the "Service Provider" deems prudent prior to providing the Services.

Ownership of any Domain registration(s) registered on "Clients" behalf by "Service Provider" (or 3rd Party) will not be transferred to "Client" until satisfactory payment is received in full by "Service Provider" for said registration(s). If payment is not received, or if "Service Provider" determines payment provided is unsatisfactory (fraud, insufficient funds, etc...), "Client" agrees to waive any and all rights to said domain registration(s) and permit "Service Provider" to return domain registration(s) to the domain name registry, if possible, or assume full and complete ownership of domain registration(s) for any purpose whatsoever. "Service Provider" does not permit "Client" to transfer any domain registration(s) away from "Service Provider" control until full and satisfactory payment is received for all domain registration(s).

- Term:** It is understood that unless this agreement is clearly designated as a "month to month" term, then the Initial Service Term is for 12 months as indicated and is automatically renewed annually unless written notification of cancellation is received by the "Service Provider" not less than (thirty) 30 days prior to the anniversary date. After first annual automatic renewal, most plans will be considered "month to month". Certain such plans have annual components. To the extent possible as determined by "Service Provider", in their sole discretion, such plans shall have all but annual components waived on termination (see "Termination" and "early Termination" below. The Term commences on the date the "Hosting Service" is provisioned and ready for use for each location or also as of the date of this contract as applicable.
- Taxes:** All applicable federal and provincial taxes shall be added to the amounts payable and shall be paid by the "Client" to the "Service Provider".
- Termination:** a) The "Service Provider" reserves the right to revoke accounts and refuse "Hosting Service" with notice. Any attempts to compromise the security of the "Company's" network will result in termination of this Agreement and with forfeiture of remaining balance. Upon the termination of this Agreement, the "Service Provider" may discontinue hosting and may claim the immediate payment of all amounts owed to it by the "Client" after which DNS control can be passed to another provider if applicable; b) The "Hosting Service" shall terminate automatically if the "Client" is in payment default, commits any act of bankruptcy within the meaning of the Bankruptcy Act (Canada), if any bankruptcy or insolvency proceeding is taken by or against the "Client", if the "Client" makes any voluntary assignments for the benefit of creditors, if a receiver takes possession of any of the "Client's" property, if the "Client" ceases to carry on a business in the normal course, if the "Client" is liquidated or wound-up, if the "Client" breaches proper use as described in Section 11 "Use of Service", or if the "Client" fails within 10 days of its receipt of the "Company's" notice to such effect to remedy and breach by it of this Agreement. c) Termination of this agreement for any reason shall not relieve the "Client" from any liability, including amounts owing, accrued hereafter prior to the time termination becomes effective. d) Cancellation of, or changes to (including, but not limited to, changes of address, telephone number, moving locations, etc.) and all cancellations and changes must be submitted in writing to "Service Provider".
- Early Termination by the Client:** The "Client" may terminate "Hosting Service" it has requested at any time before the end of a relevant Service Term by giving notice of the Termination in writing to the "Service Provider" at least thirty days before the proposed early termination date. In the event the "Client" terminates this agreement or any of the Services prior to the end of the Term or any Renewal Term, the "Client" shall pay to the "Service Provider" in a single payment, as liquidated damages, an amount equal to one hundred percent (100%) of the remaining payments outstanding to the end of the Term or Renewal Term, as the case may be. If term is in "month to month" phase (after initial year of service), if there are any "annual" components of the plan (such as registrar fees or 3rd party services which are annual pre-paid (such as Sucuri, certain Microsoft 365 plans), the "Client" shall also pay an amount equal to 100% of the balance of those services as reasonably calculated by "Service Provider", In certain situations, if services of the same or greater monthly rates and comparable Term are commenced by "Client" and approved by "Service Provider" such termination payments may not apply.
- Limitation of Liability:** a) The "Company's" sole obligation under this Agreement is to furnish the "Hosting Service". Except as otherwise provided herein, the "Service Provider" makes no representations or warranties of any nature whatsoever, whether expressed or implied, with respect to the "Hosting Service" including without limitation, any representation or warranty with respect to the network transmission capacity of common carriers or the "Client" or the reliability of the equipment of common carriers or the "Client". b) The "Company's" liability for negligence or breach of this Agreement shall not in any event be greater than the total amount paid by the "Client" to the "Service Provider" for the service period that gives rise to the claim. c) In no event shall the "Service Provider" be responsible for any indirect damages including but not limited to, damages resulting from loss of use, loss of profits, lost business revenue or third party revenue. d) The "Company's" limitation on liability contained in the Agreement shall survive the termination of this Agreement.

e) The liability of the "Service Provider" for claims arising from the provision of Services hereunder shall be limited to those actually proven as directly attributable to the "Service Provider" and the "Client's" exclusive remedy shall be: (i) the correction of defects of which the "Service Provider" has received written notice by the "Client" within thirty (30) days of occurrence; or (ii) where such correction is not practicable, an equitable credit not to exceed the charges invoiced to the "Client" for that portion of the Services which were defective, unless specified otherwise. e) The "Service Provider" is not responsible for any hardware or software problems on the "Client's" equipment. The "Service Provider" will perform service work on the applicant's computer/network/website/hosting platform at their request, subject to the Terms and Conditions of our Work Order. The "Service Provider" is not responsible for, nor assumes any liability for, warranty considerations or avoidance. f) Notification shall not be provided for regular scheduled maintenance where no service interruption is expected or unscheduled emergencies. h) The "Service Provider" will not provide technical support, or be responsible for any technical issues due to software that has not been pre-approved by the "Service Provider". j) The "Service Provider" is committed to maintaining reliable and redundant infrastructure as a hosting environment. If there are compromised website or email service that the "Service Provider" becomes aware of, "Service Provider" will advise the "Client" (primarily by means of automated email to the communication email provided at provisioning. It is the obligation of the "Client" to repair. Security Monitoring is included in certain plans. Each plan specifies "Client" entitlement with respect to restoring first and second level backups, (fees, if any) and entitlement with respect to liaising with those responsible for web development or email security. The "Client" is solely responsible for maintaining and updating website "plugins" and security updates from supplies or software which may have been uses in the development and operation of the website.

9. **Use of Service:** a) Use of the "Company's" "Hosting Service" constitutes acceptance of the Terms and Conditions and Disclaimer as outlined in this document and the "Service Provider" reserves the right to modify the Terms and Conditions at any time and will post those changes on website noted below. The effective date of these terms and conditions is at the time of posting on the website. It is the responsibility of the Client to check <http://www.sgci.com/terms> for updates. b) The "Client's" use of the "Company's" network and Hosting Service may only be for lawful purposes. Transmission or storage of any material in violation of applicable law or regulation is prohibited. This includes, but is not limited to: transmitting or storing of data which is threatening, obscene, of defamatory, which belongs to a third party and is protected by copyright, trade secret, patent, or other intellectual property laws, or violates export control laws. Further examples of non-acceptable Content or links, include without limitation: "pirated software", "hacker programs or archives", "warez Sites", "IRC Bots" and "MP3" files. c) "Client" represents and warrants that "Client" is (a) party doing business, (b) located in a jurisdiction, and (c) engaged in activities, such that "Service Provider" (or 3rd Party) is not required to obtain any export license, permit or other approval under applicable laws and regulations including, but not limited to export control and/or sanctions regulations of any jurisdiction the laws of which may be implicated by this Acceptable Use Policy. Furthermore, You acknowledge and agree that "Service Provider" (or 3rd Party) shall have the exclusive authority to monitor such status on a regular basis and, if it should be determined by "Service Provider" (or 3rd Party) at any point in time, are in violation of any of these representations and warranties, "Service Provider" (or 3rd Party) shall have the exclusive authority to immediately terminate any and all Service(s) to "Client" without prior written notice, and "Client" will forfeit any remaining balance on account. d) The "Client" agrees to indemnify and hold harmless the "Service Provider" from any claims resulting from the "Client's" use of the "Hosting Service" by anyone authorized by the "Client" who damages the "Service Provider" or any related third party. e) The "Client" agrees to indemnify and save the "Service Provider" and its suppliers harmless from and against all loss, liability, damages of any type and expenses, including reasonable counsel fees, arising from any and all claims in connection with the "Client's" or its end-users' use of the "Hosting Service", including without limitation all claims for libel, slander, invasion of privacy, infringement of copyright, invasion of private records and all other claims arising from Information transmitted or made accessible by or to the "Client" or its end-users as well as any and all claims for infringement of parties arising from the use by the "Client" of any equipment, software, apparatus and or systems not provided by the "Service Provider" in connection with the "Hosting Services". f) reserves the sole and exclusive right to cancel Your account based on, but not limited to, "Client" engaging in activities that: encumber the CPU; require resource intensive processes, including the usage of resource intensive software applications or server-side scripts; require significant bandwidth (including involuntary DDoS attacks against "Client"); g) "Service Provider" shall not disclose any proprietary or Confidential Information on "Hosting Service" unless so directed by a court of law or government authority. h) Resale of or use of the "Hosting Service" in whole or in part by another person or organization is strictly prohibited. i) The "Service Provider" will provide technical support for current accounts to establish the "Client's" "Hosting Service" and setup the hosting environment. Hardware and software problems on the "Client's" equipment remain the responsibility of the "Client". The "Service Provider" is not responsible for a lack of knowledge by the applicant regarding use of the "Hosting Service" or computer. j) The "Service Provider" is not responsible for any charges or damages that may be incurred by the "Client's" website being "hacked". k) The "Service Provider" shall not be responsible if any changes in the Services cause features or functions not provided by the "Service Provider" to become obsolete, require modification or attention, or otherwise affect performance of the same (for example: if a required service pack or security upgrade causes a web site function to not operate as prior). Where this occurs, if upgrades to solve are not possible, "Service Provider" will endeavor to offer an alternate (possibly 3rd party) similar service that may still have this service available. l) You are solely responsible for backing up "Client" Content and or any "Client" files that reside on "Service Provider" managed and/or owned servers. "Service Provider" is not responsible in any way for the Content "Client" hosts on "Service Provider" servers, or for the reliability of the transmission of data across or through the "Service Provider" network (Notwithstanding the foregoing: "Service Provider" takes backups very seriously and has redundant backup methods available and applied for all plans.

10. "UNLIMITED" USAGE POLICIES AND DEFINITIONS: This section applies only to services purchased that are provided with unlimited features, i.e. bandwidth and disk space. All other services are provided with set limitations, as defined by the service plan(s) subscribed to, as they may change from time-to-time.

On certain plans, "Service Provider" or 3rd Party Provider does not set any pre-defined limits on the amount of resources "Client" can consume as part of the Services they subscribe to. However, "Service Provider" or 3rd Party Provider reserves the sole and exclusive right to decide what constitutes reasonable consumption based on the principal of providing "Client" with all the disk space and file transfer resources necessary to operate "Client" web site, as long as "Client" uses the hosting services in accordance with the following additional terms:

"Service Provider" or 3rd Party Provider does not set any limits on the amount of disk space "Client" can use for "Client website, nor does "Service Provider" or 3rd Party Provider charge additional fees based on an increased amount of storage used, provided "Client" use of storage complies with these Terms. You agree that these resource allocations are optimized and dedicated towards serving web documents, email services and is not intended for online storage, backups, or archiving of electronic files, documents, log files, etc., and any such prohibited use of the Services will result in the termination of "Client" account, with or without notice. All downloadable files or files stored on server must be available for download via a HTML document stored on hosted account in publicly accessible area(s) and must be directly related to the general nature of the website index. Accounts with an excessive number of files negatively affect the performance of servers and "Service Provider" or 3rd Party Provider may request that the number of files be reduced to ensure proper performance.

"Service Provider" or 3rd Party Provider web hosting service is a shared service, which means multiple web sites are hosted on the same server utilizing the same server resources. "Service Provider" or 3rd Party Provider "hosting service" is architected to meet the typical needs of home based office and small business website customer in North America. It is NOT intended to support the demands of large enterprises, international businesses, or non-typical applications better suited to a Virtual or Dedicated Server (which "Service Provider" also offers).

"Service Provider" or 3rd Party Provider will make every commercially reasonable effort to provide additional resources to "Client" should you be in compliance with the Terms and Conditions of this agreement, including moving "Client" to less utilized servers, should that be necessary. However, in order to ensure a consistent and quality service for all Subscribers, "Service Provider" or 3rd Party Provider reserves the right to implement safeguards to protect the integrity and service quality of all customers by imposing limitations on specific web sites until such time as "Service Provider" personnel have had an opportunity to decide what the best course of action is to take.

11. **Force Majeure:** Neither the "Service Provider" nor its employees, officers, directors or representatives shall be liable for failure to perform or delay in performance due to anything beyond the reasonable control of the "Service Provider" including but not limited to, fire, flood, earthquake, elements of nature, acts of God, explosions, power failure, fuel or energy shortage, war, terrorism, revolution, civil commotion, acts of public enemies, law, order, regulation, ordinance or requirement of any government or its representatives or legal body having jurisdiction, or unrest such as strikes, slowdowns, picketing or boycotts, the failure of any network or telecommunication system of a third party upon which the "Service Provider" is reliant to provide the "Internet Services" then the "Service Provider" shall not be liable for that default or delay, and shall be excused from further performance of the affected obligations on a day-by-day basis, if the "Service Provider" uses commercially reasonable efforts to expeditiously remove the cause of such default or delay in its performance.
12. **General Provisions:** Neither this Agreement nor any rights hereunder may be assigned by the "Client" without the prior written consent of the "Service Provider". The "Service Provider" may assign this Agreement or its obligations hereunder to an affiliated or non-related Company.
13. **LIMITATION OF LIABILITY:** "CLIENT" SPECIFICALLY ACKNOWLEDGE THAT "SERVICE PROVIDER" OR 3RD PARTY IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHER, MYHOSTING.COM SHALL HAVE NO LIABILITY TO YOU FOR ANY CONTENT DOWNLOADED FROM THE SERVICE. YOU AGREE THAT THE AGGREGATE LIABILITY OF "SERVICE PROVIDER" OR 3RD PARTY, ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS OR ADVISORS TO YOU FOR ANY AND ALL CLAIMS UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY ARISING FROM THIS ACCEPTABLE USE POLICY UP OR FROM THE USE OF THE SITE, THE CONTENT, OR THE SERVICES IS LIMITED TO \$CDN100.

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<http://portal.blackcreektech.local/isp/Shared Documents/2015 SGC Hosting Agreement T's and C's Attach.docx>