

# Web Hosting and or Cloud Sync Hosting Agreement, Terms, Conditions, & Policies

## 1 General

This agreement is between Mountaineer IT (hereinafter referred to as Provider), and the signed below individual or entity (hereinafter referred to as Client) who is applying for Web Site Hosting and or Reseller Services and or Cloud Sync NextCloud Services (hereinafter collectively referred as Hosting) on Provider's Servers. Client agrees to an on-line, paperless subscription. Client acknowledges that all information provided by Client is true and correct to the best of Client's knowledge. Client agrees that the act of submitting an online application form constitutes acceptance of all terms and conditions associated with the services applied for and that the act of online submission shall be in lieu of written signature. Client expressly understands, acknowledges, and agrees that in submitting an application and paying for any and all services to be rendered by Provider, Client shall abide by all Terms and Conditions stated herein, as well as any other applicable conditions (e.g. for domain names).

### 1.1 Authorizations

Client will use Provider services in compliance with all regulations, laws and terms applicable to Client, including those of Provider and of Servers locations. Client agrees to pay and authorizes Provider to charge all fees due using the payment information provided by Client at the time of application and/or those updated.

### 1.2 Responsibilities

Client is solely responsible of managing and backing up his site and keeping his software scripts secure and up-to-date. Provider is responsible to implement Hosting Servers corresponding to the description of the core Hosting services subscribed by the Client. Provider is free to choose his implementation technology, methods and Server and services locations, including abroad or using foreign services and contractors in third countries. Also further adaptations and extensions are at Provider's sole discretion. Provider is not responsible for the security or proper function of software installed by Client, even if they are installed with Provider tools.

### 1.3 Business-to-Business contract

Provider Hosting services are not consumer products, as their setup requires webmaster skills. Thus this Agreement is not a business-to-consumer contract but a business-to-business contract.

### 1.4 Support

Provider will provide support related to problems with the Hosting functions of its Servers free of charge during regular business hours. Support not related to core Hosting functions problems might be charged to Client at applicable rates. A Knowledgebase section for community support is offered free of charge for general questions, and a support portal is available to Client for private or urgent questions only.

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## **1.5 Pricing**

Applicable prices are those published online on Provider's website at subscription time and at renewal time. Provider reserves the right to change prices over time at Client's advantage or disadvantage. New prices do not affect the current subscription period and will apply only to next renewal period. No refunds will be made due to price changes. Storage space limits and monthly Internet traffic limits are handled and enforced automatically. Clients reaching Internet traffic limits will receive email notification before limit is reached in order to be able to upgrade their Hosting plan. Some hosting plans may have unlimited Internet traffic or pricing for exceeding plan's Internet traffic. In that case the exceeding traffic may be billed by Provider's choice either at overage time, or in the next monthly payment cycle.

## **1.6 Reselling or hosting third-party sites**

Non-reseller plans are for Client's own use, and most sites hosted under those non-reseller plans must be for Client's own use. In all cases, including for reseller plans, the Client is responsible towards Provider for the respect of this agreement for all web sites hosted at Provider by Client, including third party web sites, and for the liabilities arising out of this agreement.

## **1.7 Disclaimer of warranty**

Provider's infrastructure has been designed to prevent and minimize damage risks. Provider also provides 14-day backup incremental on all hosted servers. However, no insurance is given expressly or implied hereby, and any damages incurred by Client due to disruption of service (including loss of connectivity, Server outages, data corruption or loss) by Provider or its providers or third parties is at Client's sole charge, and shall in all cases be expressly limited to the fees paid by Client to Provider for services in the corresponding period and shall under no circumstances include reimbursement for losses of income or other consequential damages claimed by Client.

## **1.8 Indemnification**

Client is solely responsible for the content stored in his folders on Provider's Servers and agrees that it shall defend, indemnify, save and hold Provider harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against Provider, its agents, its customers, officers and employees, that may arise or result from any content, service provided or performed or agreed to be performed or any product sold by Client, it's agents, employees or assigns. Client agrees to defend, indemnify and hold Provider harmless against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with a Provider Server; (2) any material supplied by Client infringing or allegedly infringing on the proprietary rights of a third party and (3) copyright infringement.

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## 1.9 Notifications

Provider relies on e-mail as the primary means of notifying Clients of important system news, problems with Clients' accounts or usage of those accounts, billing problems, etc. Any notifications will be e-mailed to Client domain's primary e-mail address and/or to the contact e-mail address provided by Client upon application for services. Client agrees to monitor these e-mail addresses on a regular basis and to respond promptly, if required, to any notifications. Client notifications to Provider should be made using Provider's portal.

## 1.10 Cancellation policy

Client bears all responsibility for ensuring effective cancellation of Client account. This responsibility includes providing effective and verifiable notification to Provider of Client's desire to cancel an account. This responsibility shall not be waived or modified by Client in any way at any time subsequent to the submission by Client of an application for Provider account. Provider will implement without further notification Client's cancellation notice, providing the terms of this cancellation policy have been followed. Provider must receive Client cancellation at least 30 days prior to the anniversary date of Client domain's activation in order to avoid Hosting charges for the next renewal period. All credit card charges or billing will cease within 30 days upon receipt of notice of cancellation. E-Mail cancellations must be from the Provider portal or from the contact e-mail address Client registered at the time of account setup. If Client has a balance due at the time of cancellation, this balance must be paid in full. Cancellation does not absolve Client of any outstanding financial obligations. All payments are due in full 14 days before the anniversary Billing date of each service. Failure to remit payments for service on the monthly or yearly anniversary date of the service is a violation of the Term of Services. Failure to remit payment after the first reminder can result in the deactivation of the user account. Reasonable fees might be charged for re-activating accounts. All Client data will be destroyed 14 days after the second reminder or after expiration date of an not renewed or unpaid account.

## Refusal of service

Provider reserves the right to refuse or cancel service at Provider's sole discretion, with or without reason, with or without warning, and without indemnification.

## 1.11 Jurisdiction

Client agrees to submit to the jurisdiction of the applicable courts of Provider's physical residence or any other place and court elected by Provider for any litigation, mediation, or arbitration which may arise from any dispute concerning any of the provisions herein. Controlling law shall be that of the State of Provider's residence (United States, California). The prevailing party in any litigation hereunder shall be entitled to recover its reasonable attorney's fees and court costs. For the execution of this agreement, Mountaineer IT Hosting and MountaineerIT.com is operated and an entity of Christopher L Thompson

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## Severability

If any provision of this Terms and Conditions are held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect.

## 1.12 Complete Agreement and Policy changes

This license constitutes the entire agreement between the parties with respect to the use of the Hosting services and supersedes all prior agreements regarding such subject matter Provider reserves the right to change this agreement and policies with or without notice. Client agrees to comply with these policies in their current and future state. At all times, the latest version, available on MountaineerIT.com, is taking precedence over this copy. Client agrees to periodically review published policies to ensure understanding of and compliance with current policies.

## 2 Acceptable use policies

2.1 Prohibited services the following content and activities, without limitations, may not be displayed or promoted by Client nor associated in any way with Client's account or Provider's services. Provider shall be the sole arbiter as to what constitutes violation of this provision.

- Transmission, storage, or presentation of any information, data or material in violation of any United States, and any other Servers location and Client State or local laws.
- Copyrighted material used without permission.
- Material or activities judged by Provider to be threatening, obscene, disparaging, or hate-related.
- Material protected by trade secret or other statute.
- Pornography, nudity, erotica, and sex-related merchandising, including sites that may infer sexual content, or link to adult content elsewhere.
- Online games involving directly or indirectly money (casinos, poker, and so on).
- Any scam or ponzi (pyramidal) schemes, or any intentionally deceptive content and similar.
- Content that promotes any illegal or prohibited activity.
- Content that may be damaging to Provider's servers or to any other server on the Internet (including DDoS Attack, Spoofing, Proxying and so on).
- Pirated software (warez).

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- Promotion or sale or implementation of unsolicited or bulk e-mail (SPAM) software or services.
- Illegally distributed media (such as MP3, sounds, video, text, software, or any other media).
- Mass download sites
- IRC sites, peer-to-peer services, and any similar services
- Harassing, annoying, or otherwise interfering with any person's, group's, or organization's use or enjoyment of the Internet experience.
- Content and activities not complying with Netiquette / RFC1855
- Links or reference or encouragement to any of the above.

## 2.2 Server abuse

Any attempts to undermine or cause harm to any server is strictly prohibited. This includes but is not limited to attempting to gain access to password files other than your own, attempting to gain unauthorized access to other accounts on your Server, or anything that causes Server malfunction. Failure to comply is subject to immediate account deactivation without refund.

## 2.3 Resource usage

Client can use the resources of Provider in a reasonable way, which doesn't disadvantage other clients of Provider. Provider will be the sole arbiter as to what constitutes a violation of this provision. Failure to comply is subject to immediate account deactivation without refund.

## 2.4 Data ownership and Physical location of data storage

Provider offer's clear identification of physical and virtual location for Clients data both on live production servers as well as onsite/offsite backups. Provider will keep all Clients data on servers inside Siskiyou County along with backups of Client Data/Servers. Email notifications will be sent before Client data is moved outside of Siskiyou County with detailed information regarding new location and reason for transfer of data to new location. Provider holds no ownership of client data, only offering a service to Client by providing a means of hosting web services and or cloud sync services.

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## **3 Ownership**

Provider and his contracting partners maintain control and ownership of any and all IP numbers and addresses that may be assigned to Client and reserves in its sole discretion the right to change or remove any and all IP numbers and addresses. Client shall keep the rights of ownership and use of his own domain name(s) even if Client changes Providers. In case of disputes regarding authority over domain names, Provider will follow industry standard practice of giving ultimate authority to the domain name registrant. Provider and his licensors maintain control and ownership of any copyright, proprietary and/or licensed software, scripts, programs, images, or other electronic data or media installed and or provided by Provider.

## **4 Privacy**

Provider and Client will keep mutually data private and not share or reuse the other party's data, and put in place all normal reasonable security measures to protect each other's data, including corresponding NDA agreements with employees and contractors. Client recognizes that Provider can be required to provide data to legal authorities upon valid legal injunction, and to comply to such injunctions with or without Client's authorization or consent. Furthermore, Client understands there is no absolute security, and in order to limit consequences of any accidental exposure, Client agrees to not use the Hosting storage for data beyond the data required for the Hosting. Client authorizes Provider to backup and archive the Servers on-site and off-site, including Client's data and Sites for the purpose of continuous Hosting operations, and to maintain Server logs required for Provider's technical operations and legal compliance. This authorization does not imply that Provider must make or keep such backups, archives and logs. In case of suspected unauthorized use, or complaint, Provider can, but must not, inspect Client data and traffic for compliance check purposes, prior to his decision to take measures.