



## **Terms of Service & Acceptable Use Policy ("Dedicated Hosting Agreement")**

This legally binding contract (the "Agreement") is by and between **HugeServer Networks, LLC**, a Limited Liability Company ("HugeServer"), and you and your assigns, employees, agents or contractors ("You", "Your", the "Client") and is effective as of the date you purchase dedicated hosting services from HugeServer. This Agreement sets forth the terms and conditions of Your use of HugeServer's Dedicated Server services (collectively, the "Services") and represents the entire agreement between You and HugeServer relating to the Services. This Agreement contains provisions that set forth HugeServer's Acceptable Use Policy, Privacy Policy and guarantees of a certain service level (found in the "Uptime Guarantee" and "Service Level" sections below).

By purchasing the Services, You acknowledge and agree that You have read, understand, acknowledge and agree to be bound by all the terms and conditions of this Agreement, along with any new, different or additional terms, conditions or policies that HugeServer may establish and post on its website from time to time.

### **Description of Services**

HugeServer provides the Services to its customers for a monthly fee. HugeServer will provide You an account on one or more of its dedicated servers, provided, however, You abide by the terms and conditions set forth in this Agreement and in any other agreement pertaining to other services you may purchase. HugeServer reserves the right to modify its network and facilities used to provide the Services for purposes including, but not limited to, accommodating evolving technology and increased network demand, and providing enhanced services. HugeServer shall use reasonable efforts to notify You in advance of any planned changes to HugeServer's network or facilities that may adversely affect the Services provided under this Agreement.

### **Fees**

Fees for Services ordered by You shall be charged beginning on the date of the initial order and that date shall serve as the monthly anniversary date for all future billings including one time fees, upgrades, additional services, terminations and service credits. Fees are due in advance of the monthly service cycle and will be billed on the in a period of 5 days before of your due invoice in the month.

From time to time, it may be necessary to make adjustments in the fees and surcharges charged for the Services in order to cover certain changing costs (e.g., power) incurred by HugeServer in providing the services. Such adjustments will be reflected on the statement or invoice provided to you for the Services, and you agree to pay the fees and surcharges for the Services, as adjusted.

## **Payment Options**

HugeServer provides several options for payment:

- **Credit Card on File**. When you place a credit card on file with HugeServer, we will, typically, bill the card a few days before your invoice is due. If the credit card charge is expired, not authorized or declined by our processing company, we will notify you via E-mail. We request that you update your card promptly. If your invoice becomes more than 3-days past due (from the invoice Due Date) then HugeServer reserves the right to suspend service or terminate service after 5 days past due until payment is received.
- **Checks, Money Orders, Wire Transfers and PayPal payments**. HugeServer accepts both checks and money orders. In the event a check is returned, HugeServer will charge a returned check fee of \$35.00 or, if less, the legal limit in Your state or country. You are responsible for payment of all bounced check fees. In the event Your invoice is 3-days or more past due (from the invoice Due Date) then HugeServer reserves the right to suspend service or terminate service after 5 days past due until payment is received.

## **Late Payment**

HugeServer reserves the right to charge a late fee of 1.5% per invoice per month on late payments. Invoices will be automatically considered late once the invoice due date has passed.

## **Non-payment Termination**

In the event you fail to pay your invoice within 3 days of the due date, HugeServer reserves the right to suspend your service.

If you are still past due on the 5th day from the due date of the invoice, we reserve the right to terminate your service entirely and reformat your server.

If you are terminated for non-payment, we also reserve the right to refer your account to a third party collection agency and you agree to pay any collection fees or legal fees we may be charged to collect on your debt.

## **Overage Billing**

"Overage" is defined as usage of the Services provided by HugeServer to You in excess of the allocated limitation. Overages are charged for Bandwidth and Professional Services (administrative time) used in excess of the amount allocated to Your account.

You agree to pay the then-current Overage fees and charges for the HugeServer services, including backup and bandwidth Overage fees, upon receipt of an invoice. You can be informed about the extra Fees from you account manager with sending an email to him.

Overage fees can be avoided by subscribing to a higher service plan.

## **Term and Termination and Money Back Guarantee**

You agree to a month to month term for the Services unless otherwise agreed to in writing. The month to month term for services is automatically renewed each month unless either party notifies the other in writing of its desire that the Agreement not be renewed, no later than three (3) days before the next upcoming anniversary date for billing. For information on how to terminate Your account, please contact the HugeServer billing department.

When you request termination, we will follow this process: We will first contact you to confirm the termination and verify that you are authorized to your account to terminate it. Then, we will immediately suspend billing and disconnect service to the server. We are not able to schedule termination ahead of time, and all termination requests are effective immediately. Regarding mid-month or mid-period terminations, HugeServer will not issue pro-rated refunds for payments received in the middle of a payment cycle. Receipt by you of any Services in a given period will obligate you to pay for the Services during that entire billing period.

HugeServer may terminate this Agreement effective immediately and without notice upon any breach by You of any of the terms of this Agreement. In such event, HugeServer shall have no obligation to refund any fees paid in advance by You.

At this time, HugeServer does not offer a refund-based MBG of any kind.

## **Chargebacks and Payment Disputes**

Under this Terms of Service agreement, you must first contact HugeServer to attempt to resolve any billing disputes before contacting your bank or credit card company to dispute the charges. You further agree that any billing disputes must be submitted in writing to our billing department within one month of the invoice payment in question.

By using our services You agree to the above policy and to contact HugeServer before contacting your financial institution to seek a resolution.

In the event you dispute charges contrary to this agreement, we reserve the right to refer your account or sell your debt (plus any applicable fees) to a third party collection agency. We also reserve the right to take further legal action against you.

### **Tortious Conduct**

Any abuse towards any HugeServer employee will not be tolerated. You are expected to request and respond to support and other issues in a professional manner, when emailing, calling or submitting online tickets to HugeServer. Any cursing, yelling, or further intentional disruptive behavior aimed at HugeServer or its employees shall be considered a violation of this Terms of Service agreement.

Any threat; whether orally, verbally, in written, via E-mail, via Live Chat, delivered by second parties or delivered in any other way, and directed towards HugeServer or any of HugeServer's employees, partners, staff, contractors, sub-contractors, facilities, offices, etc. shall be construed as a violation of this Terms of Service agreement. Threats of physical violence will be directed to the proper authorities.

No refunds shall be given when the above Tortious Conduct clause is a violation and necessitates the termination of an account or services.

### **Storage and Security**

At all times, You bear the full risk of loss of any content and software you place on the HugeServer servers. You are entirely responsible for maintaining the confidentiality of Your password and account information. You acknowledge and agree that You are solely responsible for all acts, omissions and use under and charges incurred with Your account or password or in connection with the server or any of the content displayed, linked, transmitted through or stored on the server.

HugeServer does not undertake any obligation to provide management or security services unless you specifically request it to do so. If any technology specifically associated with your account requires updating, You must make a request for such update through HugeServer's ticketing system.

You shall be solely responsible for undertaking measures to: (i) prevent any loss or damage to Your content; (ii) maintain independent archival and backup copies of Your content; and (iii) ensure the security, confidentiality, and integrity of Your content transmitted through or stored on HugeServer servers. HugeServer shall have no liability to You or any other person for loss, damage or destruction of any of Your content.

### **Uptime Guarantee**

"Uptime" refers to the amount of time the Services are available, as measured solely and only by HugeServer's internal monitoring systems. "Downtime" refers to the amount of time the Services are

unavailable, as measured solely and only by HugeServer's internal monitoring systems. HugeServer guarantees that its Networking and Connectivity services will be available 100% of the time. In the event such level of service is not provided, HugeServer will credit your account in an amount as determined in the chart below, reflecting credit percentages of the monthly fees paid by You to HugeServer for the Services, but not payments made for any of the following products and services: domain name registration, software licenses, IP address charges, set up fees, shipping and handling, SSL certificate fees, labor charges, and other services which are unrelated to Uptime.

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|-------------------|---------------------------------|
| 1. 100%           | will result in a credit of 0%   |
| 2. 99.1% to 99.9% | will result in a credit of 5%   |
| 3. 98% to 99%     | will result in a credit of 10%  |
| 4. 95% to 97.9%   | will result in a credit of 25%  |
| 5. 90% to 94.9%   | will result in a credit of 50%  |
| 6. 89% or below   | will result in a credit of 100% |

To receive a credit, You must make a request by sending an email message to **billing@hugeserver.com**. Each request in connection with this Agreement must include the dates and times of the Downtime, the name and IP address of the server or servers which experienced the Downtime. The request must be received by HugeServer within ten (10) business days after the incident of Downtime. If the unavailability is confirmed by HugeServer, credit will be applied to Your HugeServer account within thirty (30) days of receipt of Your credit request.

The total amount credited to You in a particular month under this Agreement shall not exceed the total amount of fees paid by You for such month for the affected Services. Credits are exclusive of any applicable taxes charged to You or collected by HugeServer and are Your sole and exclusive remedy with respect to any Downtime.

The provisions of the Agreement pertaining to Force Majeure are unaffected by these terms referring to Uptime Guarantee. Moreover, downtime caused by any of the following shall not result in any obligation by HugeServer to provide credit to You:

1. emergency maintenance
2. scheduled maintenance
3. system upgrades
4. domain name system (DNS) problems outside of HugeServer's control
5. issues with FTP, POP, IMAP, or SMTP customer access
6. Acts or omissions by You or any of Your employees or agents, resulting in downtime
7. Any negligence, willful misconduct, or use of the services in breach of HugeServer's Acceptable Use Policy
8. Problems with users' web browsers, DNS, or other caching that might make it appear the Services are unavailable even though others can still access the HugeServer servers.

## **Hardware Replacement Guarantee**

HugeServer strives to maintain the integrity of the hardware used to provide its services, and any Downtime caused by hardware failure shall be credited pursuant to this Agreement. HugeServer maintains a stock of all essential hardware necessary to provide the Services. HugeServer shall replace any and all substantially malfunctioning hardware within 2 hours of HugeServer becoming aware of such substantial malfunction.

The amount of time for replacement of hardware shall be measured from the moment that HugeServer determines that the hardware must be replaced, and does not include time spent diagnosing the problem, researching other solutions, investigating the cause of the failure or time spent installing software, restoring backups or other, similar situations.

In the event that HugeServer fails to meet this hardware replacement guarantee, HugeServer will issue, to You, account credits in the amount of 10% of the base monthly server rent for each hour after the first hour of the monthly service fee for the server in question to a maximum of 50% of the cost of the server itself (excluding any management, upgrades or additional services associated with the server in question.)

To receive a credit, You must make a request by sending an email message to **billing@hugeserver.com**. Each request in connection with this Agreement must include the dates and times of the hardware replacement situation, the name and IP address of the server or servers which experienced delayed replacement. The request must be received by HugeServer within ten (10) business days after the incident. Upon confirmation by HugeServer, credit will be applied to Your HugeServer account within thirty (30) days of receipt of Your credit request.

## **Zero Tolerance Policy for Unsolicited E-mail/Black Listing**

"Unsolicited E-mail Complaint" is an occurrence of a third-party complaint regarding a specific E-mail communication message sent by You. "Unsolicited E-mail Incident" is an occurrence of a single E-mail message which may have been sent to multiple E-mail addresses. An Incident may contain numerous Complaints. Incidents may contain Complaints received up to 24 hours after the first. After 24 hours, a new Incident will be opened.

Black Listing: "IP Black Listing" is an occurrence when a third party blacklisting service determines that a HugeServer issued IP address is a frequent source of Unsolicited E-mail. Black Listings result in the IP address (or multiple IP addresses in the same "IP range") being unable to send E-mail to certain third parties.

HugeServer has designed this portion of this Agreement to comply with the United States CAN-SPAM Act (the "Act".) The Act states that commercial E-mail must be solicited, an effective, visible and clearly defined un-subscription process be in place, that every E-mail message sent be sent from a

valid address, without any form of IP or source spoofing, that every E-mail message sent contain the physical contact information of the sender, that every recipient of such E-mail messages has requested to receive such E-mails and that the messages and method in which they were sent comply with the other provisions of the United States CAN-SPAM Act.

Zero Tolerance for Black Listing: HugeServer has a Zero Tolerance policy regarding Black Listings and considers any attempt to send Unsolicited E-mail Messages or other forms of Spam E-mail (including "Spamvertising" other websites or services or products) to be violations of this Agreement. If an IP address assigned to You is found to be Black Listed, HugeServer reserves the right to discontinue your services immediately with or without warning.

Furthermore, HugeServer will levy a Black Listing processing fee of \$200 for the first instance of IP Black Listing and \$400 for the second instance of IP Black Listing (collectively, the "Penalties".) If your service is terminated under the Unsolicited E-mail Policy then you forfeit all fees paid, including pre-paid fees and unused time. All fees paid become non-refundable. Further, account termination does not absolve or nullify Penalty payments you may owe to HugeServer. Further, you may accumulate additional Penalties based on complaints received after your termination. This section of the Agreement will survive for a period of one year after this agreement is terminated.

### **Entire agreement**

This Agreement including the attachments hereto and any Service Orders signed by the parties constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, HUGESERVER NETWORKS, LLC. MAKES NO REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES ALL IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE OR NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. In the case of any dispute or inconsistency this main agreement, any attachments, and/or any Service Order, the Service Order will take first priority, this main agreement will take second priority and the attachment will take third priority in interpreting the parties' rights and obligations.

### **Severability and Reformation**

If any portion of this Agreement is determined to be or becomes unenforceable or illegal, such portion will be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation.

### **Complaints**

Complaints or TOS & AUP violations must be reported to [abuse@hugeserver.com](mailto:abuse@hugeserver.com)

**Changes and rights**

HugeServer may vary these rules and regulations from time to time in its sole discretion, and the Customer will comply with all other reasonable security requirements that HugeServer may impose from time to time, provided that the Customer has been given 30 days notice.

**Questions or Comments**

For additional questions, please contact us using our [contact form](#) .