



VIA NET.WORKS USA
Terms and Conditions of Service: Updated 2007

1. The service

- 1.1. VIA NET.WORKS USA, Inc. ("VIA NET.WORKS") will provide you, the Customer, with those services described in the Order Form (the "Service" or "Services"). The Services will be provided according to these Terms and Conditions, the Order Form, and the Service Description (and any attachments to the Service Description).
- 1.2. You must provide all information requested in the Order Form in order that we may provide the Service. We may refuse to provide any of the Services requested until that information is provided.

2. Provision of the service

- 2.1. We will use reasonable endeavors to provide the Services by the date(s) you request.
- 2.2. You understand that the Internet is a world-wide system of independent inter-connected networks and computers. We control only those systems that are on our network. We cannot guarantee fault free service. We do not warrant or guarantee the technical quality of the connections to national or international networks supporting the Service and of any other terminal equipment, computer program and of any other systems that are not under our direct control. However, we shall use reasonable endeavors to ensure that the Service is available for your use and we will repair any reported faults on our computer systems as soon as reasonably possible.
- 2.3. You use the Internet at your own risk and agree that you are subject to and will comply with all applicable laws during your use and use by your guests, employees, officers, directors and agents.
- 2.4. You agree that we have no control over the content of the information transmitted or made available on the Internet. We do not guarantee that any particular content will be available at any given time and, except with regard to security services you may buy from VIA NET.WORKS and then only to the extent described in the related Service Description, we make no guarantee regarding the security of the Internet generally or specifically. We further assume no responsibility for any information, software, services or other materials you obtain by using the Internet.
- 2.5. You must provide a proper, effective and appropriate connection with a telecommunications provider in order to use the Services. You must pay for all telecommunications charges and comply with all rules and regulations established by the telecommunications provider in connection with your use of the Service.
- 2.6. Other than software, hardware and installation services that we provide in connection with the Service, it is your sole responsibility to make sure that you have the necessary and appropriate software, operating systems, equipment and facilities to use the Service, as may be described in the Service Description.



- 2.7. You must ensure that any software or equipment connected to or used with the Service must be connected and used according to any instructions, safety or security procedures applicable to the use of that software or equipment.
- 2.8. VIA NET.WORKS reserves the right to change the technical specification of the Service from time to time, provided that any change to the technical specification does not materially affect the performance of the Service.
- 2.9. You understand that we will provide the Service using a multi-user shared server unless agreed in the applicable Order Form or Service Description. There may be occasions where use of the Service may be affected by access of other users.

3. Use of personal information

- 3.1. You agree that we (or any of our subsidiaries or affiliates, also referred to as our "Group companies") may process personal information (including contact details) which you provide to us in the Order Form or that we learn or receive from you in connection with your use of the Services. We may process this personal information in order to administer the Contract and for purposes connected to the Services and your business relationship with us, including (by way of example only), for the purpose of notifying you (whether by mail, telephone or email), of new or additional products or services provided by us, our Group companies and selected third parties. Unless you have marked the boxes indicating your objection on the Order Form, we may disclose personal information to selected third parties for marketing purposes.
- 3.2. You may contact us at any time at marketing@vianetworks.net to instruct us to stop using or disclosing personal data for direct marketing purposes.
- 3.3. If we collect personal information in connection with this Contract, we will treat and use the information in compliance with the provisions of all relevant data protection laws, including, if applicable, your right to access the personal data and to request at any time any amendment or corrections thereto.

4. Charges and payment for the Service

- 4.1. You agree to pay all Charges, fees and other costs relating to the Services and at the time or times as set out in the Order Form, without set-off, deduction discount, charge-back or other reduction for any reason whatsoever, including any claim you believe you may have against us. You agree to pay interest of 1.5% per month on all amounts which you fail to pay within thirty (30) days of the due date or the maximum amount permitted by law, whichever is lower.
- 4.2. All Charges are exclusive of value-added taxes (VAT) and any other similar sales taxes, duties or levies imposed on VIA NET.WORKS by law which will be added to the Charges payable.
- 4.3. You agree that we may increase the monthly or annual charges if your use of the Service generates a level of access which in our reasonable opinion, our Services (or any part of it) to other users is likely to be impaired in any way whatsoever. If you find such increase in Charges unacceptable, you may terminate the Contract by providing us with written notice.



Your continued use of the Service after expiration of the sixty (60) days notice period shall be conclusively deemed acceptance of such increase and your right to terminate under this Section 4 will end.

(NOTE: PLEASE VIEW THE PAYMENT/CANCELLATION POLICY FOR VIA EXPRESS SHARED HOSTING SERVICES HERE.)

5. Customer undertakings in connection with the use of the Service

- 5.1. You agree not to use and not to let any other person use the Services or any part of the Services to store, reproduce, transmit, communicate or receive any material, data, images or information, which is: a) in breach of any law or regulation, code of practice or acceptable use policy; b) abusive, indecent, defamatory, obscene, pornographic or menacing or otherwise offensive; or c) in breach of confidence, copyright or other intellectual property rights, privacy or any other rights of any third party, under applicable laws of any country or any international treaty, (any of which may be referred to below as "Offending Materials").
- 5.2. You further agree that, in connection with any of the Services provided under this Contract, you will not: a) directly or indirectly, use the Services or any part of the Services to provide any form of service generally associated with an Internet service provider, or otherwise in competition with VIA NET.WORKS; b) resell the Services in whole or in part to any third party, unless you have entered into a reseller agreement with us; c) infringe any of our, or a third party's, intellectual property rights or other proprietary rights party involving software, programs and any other property supplied by us for the use of the Service; d) use the Service for any unlawful purpose or cause any nuisance through use of the Service or allow others to do so, including the delivery or transmission of unsolicited e-mail, also known as "Spam"; e) provide any third party with the password to access the Service and you will not access our network from more than one location simultaneously unless otherwise contemplated under the Service Description (e.g., if you subscribe to business account and roaming services); and, f) repair, modify or tamper with our network or insert any programs, data or information in our network, which may, in any way, affect the Service, cause any damage to third parties or be deemed unlawful.
- 5.3. You further agree that you will observe (a) the acceptable use policy rules established and amended by us from time to time in relation to the use of the Service and (b) all instructions we provide in relation to the use of the Service that we believe are necessary for reasons of health, safety or the quality of any telecommunications service provided by us.
- 5.4. Certain information transmitted or displayed using the Internet may be illegal and you may be liable in this country or in foreign countries for accessing such information. You acknowledge that under the applicable national or international laws or regulations, VIA NET.WORKS may, under certain circumstances, such as the initiation of a criminal investigation, be required to provide to legally authorized entities access to information we maintain about you and Services you use and decoding keys of information belonging to you. In all such cases, we will not be liable for any damages resulting from our provision of such information or decoding keys to such authorized entities.

6. Proprietary Rights and License of VIA NET.WORKS and Third Party Software

- 6.1. If, as a part of the Service, we provide you software, whether owned by us or a third party, you agree that the ownership of and all intellectual property rights in the software shall remain vested in the owner.



- 6.2. You will have a limited non-exclusive non-transferable license to use the software solely in connection with the Service. The terms and conditions of this license are contained in the end user license agreement that is included with the software. Any other use of or dealing with such software is strictly prohibited.

7. Web Hosting Services

- 7.1. If you are using our Web Hosting Service, we may, at any time and from time to time, at our sole option, monitor and inspect your website relating to the Web Hosting Service. If we find or become aware or believe that you may be in breach of Section 5.1, we may without prior notice take any one or more of the following actions: a) remove the Offending Materials; b) suspend or permanently disable the Web Hosting Service or any part of it; or c) terminate the Contract for breach.
- 7.2. VIA NET.WORKS is not responsible for any material, data, images or information transmitted, used, communicated, passed over or received, through or on the Web Hosting Service. In particular, we do not warrant the quality or accuracy of such material, data, images or information and we assume no liability if they contain any Offending Materials. Your use of such material, data, images and information is solely at your own risk and is subject to all applicable laws, regulations, codes of practice and acceptable use policies.
- 7.3. You will, at your own expense, obtain all necessary content, including any materials, data, images, or information necessary for your use of the Service and you will be responsible for ensuring that any and all content you place on your website complies at all times with the requirements of this Contract.
- 7.4 Full backups are made monthly however, No Guarantees are made of any kind, either expressed or implied, as to the integrity of these backups. Backups are made for server restoration purposes only. It is the clients' responsibility to maintain local copies of their web content and any information on their account including but not limited to clients website, email, databases, mailing lists, and archives. If data loss occurs due to negligence of client in securing their account or by an action of the client, VIA Net.Works will attempt to recover the data from the most recent archive for a \$50.00 fee.

Backups are for website content only; it is the soul responsibility of the customer to backup email, databases and/or mailing lists

8. Indemnification by the Customer

- 8.1. You, the Customer, shall indemnify and hold harmless VIA NET.WORKS and all its subsidiaries and affiliates against any and all liability, loss, damage and expenses (including legal expenses), whatsoever arising directly or indirectly (which shall include consequential and indirect loss, loss of revenue profits, data, contracts, goodwill and anticipated savings) (all of which are referred to as "Damages") from any of your acts or omissions, including those of your employees, agents or sub-contractors, other persons you authorize to use the Services, or persons who use or access the Services without authorization as a result of your action or omission (each, a "User") including without limitation, any breach by you of any of the terms of the Contract, or any content maintained, stored or transmitted by you in connection with the Services provided to you by VIA NET.WORKS.
- 8.2. You are liable for the actions of all Users, including the failure by any User to perform or observe the terms and conditions of this Contract.

9. Rights of Non-business Customer



- 9.1. The following provisions shall apply if you are subscribing to the Service for your non-business-related use: You represent and warrant that you are at least 18 years of age and an individual using the Service for the purposes set out in the Order Form.
- 9.2. Despite the date(s) in the Order Form (if any), you agree that we may supply the Service at any time before such agreed dates, if you waive your right to withdraw in Section 9.3 below.
- 9.3. (Applies to VIA Managed Server Contracts Only) You may withdraw from the Contract within 7 days from the date the Contract is concluded by notifying us an Account Executive at 1-800-749-1706 or +1 (404)252-2972 if the Service has not commenced within such 7 day period pursuant to Section 9.2 above. Upon such withdrawal, we will refund any sums which you have paid for the Service.
- 9.4. You may address any complaints or inquiries which you may have to us at CustomerServiceManagement@vianetworks.net.

10. Suspension of the Service and Force Majeure

- 10.1. Without prejudice to our right to terminate the Contract under the applicable provisions, we reserve the right to suspend any of the Services (a) if you breach any of your obligations under the Contract and fail to correct the breach within three (3) business days notice by us, or (b) immediately, without notice, if we receive a complaint from a third-party alleging that or if we believe that you are using the Services to store, maintain or transmit any Offending Materials, or if we receive a notice from a governmental authority that you may be using the Services in violation of any law in the applicable jurisdiction, or if you are engaging in any action which is in violation of any provision of Section 5 above.
- 10.2. If after suspension of a Service, we receive written confirmation that a third-party complaint has been resolved, we may reinstate the Service.
- 10.3. We may also suspend the Services for operational reasons such as repair, maintenance or improvement of the network by providing at least two (2) days prior notice, unless such notice is impracticable in the case of an emergency or a Force Majeure event.
- 10.4. If either party is unable to perform any obligation under this Contract because of a matter beyond the reasonable control of the party ("Force Majeure") such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving either of the party's employees), or acts of local or central Government or other competent authorities, or act or omission of suppliers, including but not limited to an act or omission of telecommunication suppliers, such party will have no liability to the other for that failure to perform.
- 10.5. If any event of Force Majeure continues for more than sixty (60) days either of us may terminate the Contract after providing written notice of the intent to terminate as permitted under Section 11 below.

11. Duration and termination

- 11.1. The term of the Contract shall be as noted in the Order Form. If no end date is noted, this Contract shall continue for a period of one year and be automatically renewed for successive one year periods unless (a) either party notifies the other in writing at least 45 days before the end of the year or (b) either of us terminate the Contract as permitted by these Terms and Conditions.
- 11.2. VIA NET.WORKS may terminate this Contract if you breach any of the provisions of this Contract in any respect. With respect to payments, we may terminate immediately and



without notice if you fail to pay any Charge or costs owed within ten (10) business days of the date the payment is due. For any other breach, we may terminate the Contract if you fail to correct or remedy such breach within fifteen (15) business days of written notice of such breach.

- 11.3. You may terminate this Contract if we breach any of our obligations in any material respect and fail to correct and remedy such breach within fifteen (15) business days of receiving written notice from you describing the breach.
- 11.4. If we terminate this Contract, all amounts due under the Contract shall immediately become due and payable in full, even though our obligations to render the Services to you will terminate. If you terminate this Contract in accordance with this Section 11, we will reimburse you a pro-rata rebate of any pre-paid Charges, other than set-up fees and charges, based on the proportion of the Contract term remaining. Otherwise, we will have no liability to you for such termination. If we terminate the Contract, we reserve the right to seek other remedies we may have under this Contract and at law.

12. Warranties and limitation of liability

- 12.1. At all times, You shall bear full risk of loss and damage to your web site and all of Your web site content. You are entirely responsible for maintaining the confidentiality of Your password and account information. You 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 Site or any of Your web site content displayed, linked, transmitted through or stored on the Server. You shall be solely responsible for undertaking measures to: (i) prevent any loss or damage to Your web site content; (ii) maintain independent archival and backup copies of Your web site content; (iii) ensure the security, confidentiality and integrity of all your web site content transmitted through or stored on VIA Net.Works servers; and (iv) ensure the confidentiality of Your password. VIA Net.Works USA's servers and dedicated services are not an archive and VIA Net.Works USA shall have no liability to You or any other person for loss, damage or destruction of any of Your content. You shall at all times use the Services as a conventional and/or traditional web site. You shall not use the Service in any way, in VIA Net.Works USA's sole discretion, that shall impair the functioning or operation of VIA Net.Works USA's Services or equipment. Specifically by way of example and not as a limitation, You shall not use the Services as a repository or instrument for placing or storing archived files and/or material that can be downloaded through other web sites.
- 12.2. All warranties, conditions, undertakings or terms, express or implied, written or oral, statutory or otherwise, in respect of the Service are excluded to the fullest extent permitted by law, except as expressly provided in the Contract.
- 12.3. You acknowledge that the Charges are determined and we would not be willing to provide the Services except on the basis of the exclusions from and limitations of liability contained in the Contract. You expressly agree that these exclusions and limitations are commercially reasonable.
- 12.4. You agree that, to the fullest extent permitted by law and except as noted in this Section 12, your sole and exclusive remedy against us for any claim, whether arising out of contract, tort, misrepresentation or otherwise, will be to terminate this Contract and receive a pro-rata payment of the pre-paid Charges as noted under Section 11.4 above.
- 12.5. You further agree that in no event shall our liability with respect to any event or series of events or connected events arising out of or relating to this Contract exceed in aggregate



the pro-rated monthly charges payable by the Customer during the six (6) months (or where applicable, such other shorter period of time) preceding such event.

- 12.6. Except as otherwise noted in this Section 12, you agree that we have no liability to you for any direct or indirect, consequential, punitive or incidental damages of any kind. This limitation includes (by way of example only) damages resulting from loss of production, profits, business data, operation time, goodwill, contracts, revenues or anticipated savings arising out of or resulting from the Services being offered under this Contract. This also means that, except as noted in this Section 12, you have waived any claim against us and we will have no liability for any losses you may incur as a result of any delay, failure or error in the transmission of information or interruptions or deterioration of the quality of the Service.
- 12.7. You shall have no right to make a claim against us (and you are hereby waiving all such rights) except where you notify us in writing of the circumstances giving rise to such claim within two (2) months and issue legal proceedings against us within twenty-four (24) months of the date that you know or reasonably should have known of your right to bring such a claim.
- 12.8. We acknowledge that nothing in this Section 12 will limit our liability to you for fraudulent misrepresentation or death or personal (physical) injury resulting from our negligence, or the negligence of anyone for whom we are vicariously liable under the law. However, this is not intended to provide you with a right or remedy which you would not otherwise have.
- 12.9. This Section 12 shall survive the termination of the whole or a part of the Contract.

13. Dispute resolution

- 13.1. You agree that before you resort to any third party relief (including the courts), you will attempt to resolve the dispute by notifying us by electronic mail or registered post of your complaint. For our part, we agree to review such complaint and notify you in writing of our findings within 30 days following the receipt of your notice.

14. Governing law and jurisdiction

- 14.1. The Contract, which includes these Terms and Conditions, the Order Form and the Service Description (together with any Attachments to the Service Description), shall be governed by the laws of the State of Georgia. You agree to submit any and all disputes arising out of or relating to the Contract to the exclusive jurisdiction of the courts of the state of Georgia. You further agree to not request removal of any dispute arising out of or relating to the Contract to the federal courts. Each party involved in any dispute will be responsible for its own costs and fees.

15. Changes to the contract

- 15.1. VIA NET.WORKS may, at any time, change the Charges for the Service and amend or modify any of the terms and conditions for the provision of the Service.
- 15.2. Such changes, amendments or modifications will take immediate effect upon the expiration of any time period specified in any notice sent to you. If any material modification to the terms of the Contract is not acceptable, you may terminate the Contract by giving VIA NET.WORKS at least thirty (30) days written notice. You may not however terminate the Contract under Section 15.2 above if such modifications, changes or amendments to the terms and conditions of the Contract are made in order to comply with any law or regulation or other requirement applicable to or imposed upon VIA NET.WORKS by any



competent authority. The continued use of the Service following the expiry of the notice of modification shall be conclusively deemed acceptance of the changes, amendments or modifications and your right to terminate shall end.

16. Miscellaneous

- 16.1. If any provision of the Contract is held to be unenforceable, illegal or void in whole or in part the remaining portions of the Contract shall remain in full force and effect.
- 16.2. Any notices under this Contract shall be sent to the addresses shown on the Order Form.
- 16.3. You may not assign this Contract, or assign your rights or delegate your obligations under this Contract without our written consent. We may, at our discretion, assign this Contract and our rights and delegate our obligations under this Contract to any of our affiliates or to any company that acquires our business or assets.
- 16.4. The Contract between you and us shall consist of these Terms and Conditions, the Order Form, and the Service Description (and any Attachments to the Service Description), all of which together shall form the entire agreement between the parties. The Contract may not be modified in any respect except in writing and signed by both parties other than as provided in Section 15. No course of trade or custom shall change the terms of this Contract.