



Digital West Networks, Inc. Shared Hosting Agreement

In this Service Agreement ("Agreement"), "you" and "your" refer to each customer ("Customer") and its agents, including each person listed in your account information as being associated with your account, and "we", "us" and "our" refer collectively to Digital West Networks Inc. ("DWN"). This Agreement explains our obligations to you, and your obligations to us in relation to the DWN service(s) you purchase. By purchasing or otherwise applying for DWN service(s), you agree to establish an account with us for such services. When you use your account or permit someone else to use your account to purchase or otherwise acquire access to additional DWN service(s) or to modify or cancel your DWN service(s) (even if we were not notified of such authorization), this Agreement as amended covers any such service or actions. Additionally, you agree that each person listed in your account information as being associated with your account for any services provided to you (including, but not limited to, domain name registration services) is your agent with full authority to act on your behalf with respect to such services in accordance with the permissions granted, and that the Primary Contact and Account Administrative Contact for your account shall have the authority, without limitation, to terminate, transfer (where transfer is permitted by the Agreement), or modify such services or your account information, or purchase additional services. Any acceptance of your application(s) or requests for our services and the performance of our services will occur at our offices in San Luis Obispo, CA, the location of our principal places of business. Sections 1 through 21 apply to any and all DWN services that you purchase, whether purchased separately or as a part of a complete solution or package bundle.

By applying for a Shared Hosting service(s) account, you are hereby acknowledging your acceptance of the terms and conditions set forth within this contract. This contract is only on a month-by-month basis, and may be canceled, along with the accompanying Shared Hosting service(s), at any time as detailed in section 10.1 below.



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DEFINITIONS

The following terms shall have the following meanings as used in this Agreement as well as in any pricing information and/or quotes:

- A) "**Service**" means the provision of Remote Backup Service accessible 24x7 via the Internet, as further defined in this Agreement and in the Services Quotation.
- B) "**Network**" means the networks of routers, switches and communication channels that are owned or controlled by DWNI.
- C) "**Remote Backup Service**" means all of the computer equipment, software, networking hardware or other materials belonging to or furnished by DWNI. Additional terms are outlined in this document.
- D) "**Agreement**" means this monthly contract agreement.
- E) "**Unlimited**" is a relative term. The spirit of this term is to provide the customer as much of a given service as reasonably possible on our Shared Hosting server(s). For me detailed definition see section 12.

AGREEMENT

SECTION 1 | ACCURATE INFORMATION

You agree to: (1) provide certain true, current, complete and accurate information about you and/or your company; and (2) maintain and update the information you provided to us when purchasing our services as needed to keep it current, complete and accurate. We rely on this information to send you important information and notices regarding your account and our services.

SECTION 2 | SERVICE FEES AND BILLING

Customer agrees to pay the monthly, quarterly or annual service charges (depending on hosting package level chosen) for Service, activation and other charges indicated on the DWNI website or otherwise due hereunder (collectively, Service Charges). Service Charges do not include applicable taxes, shipping charges (if any), or telephone company charges, all of which shall be billed in addition to the Service Charges (or billed by third party providers) and shall be the responsibility of the Customer.

2.1. Initial Payment. Upon DWNI's provision of the requested services, and delivery of specified service(s)'s login credentials to Customer, Customer shall be invoiced for any and all setup fees and/or Service Charges, as identified on the DWNI's website package listing, on a pro-rated basis as of that day, and the first billing term's Service Charges shall be due according to DWNI's terms of Net 15 (further explained in section 1c below).

2.2. Recurring Service Charges. DWNI will bill Customer monthly in advance for the standard Shared Hosting package Service Charge and monthly in arrears for additional disk space, transfer and/or email POP boxes used above the hosting package limitations billed in the prior month (based on purchased plan level).

2.3. Payment. All Service Charges and other fees will be due in U.S. dollars by any DWNI accepted payment type



within fifteen (15) days of the date of invoice. Late payments will accrue interest at a rate of one and one-half percent (1.5%) per month on any and all unpaid amounts due on the 16th of each month, at DWNI's discretion.

SECTION 3 | RESALE

Customer cannot resell the Service to any third party without DWNI's prior written approval. In the event DWNI approves such resale or Customer resells Shared Hosting services (a) Customer remains responsible to DWNI for all of its obligations hereunder including but not limited to all Service Charges and liabilities arising out of or related to such third party usage, sites, communications, and the acts and omissions of such third party, (b) Customer shall indemnify DWNI for any third party claims arising out of the acts and omissions of such third party and (c) Customer and the party(s) to whom Customer resells any portion of the Services enter into written agreement(s) pursuant to which such party(s) agree to be bound by all terms and conditions in this Agreement (including, without limitation, DWNI Acceptable Use Guidelines and DWNI Anti-SPAM Policy as applicable to them and their use of the Services and the Network. Any such resale agreement shall terminate automatically upon expiration or termination of this Agreement. Notwithstanding the foregoing, DWNI is not liable to any third party resale customer for any claims, losses or damages, (including consequential damages) resulting from that Customer's use of the Service.

SECTION 4 | LIMITED SERVICE LEVEL AGREEMENT

DWNI will use commercially reasonable efforts to minimize excess Packet Loss, Latency, and Delayed Server Responsiveness to avoid downtime, as more fully set out below.

- 4.1. Packet Loss and Latency.** DWNI does not proactively monitor the packet loss or transmission latency of specific web sites on Shared Hosting accounts. DWNI does, however, proactively monitor the aggregate packet transmissions and latency within its LAN and WAN. If Customer brings internal network packet loss issues to DWNI's attention, DWNI will use commercially reasonable efforts to determine the source of such Excess Packet Loss or Latency and to correct such problem to the extent that the source of the problem is on the Network
- 4.2. Server Resources and Availability.** DWNI will use commercially reasonable efforts to monitor and prevent excessive consumption of server resources. Shared hosting accounts do maintain a higher risk of server delaying incidents due to the higher level of shared applications on a single web hosting server. Hosting customers are required to deploy only production-ready sites, scripts and coding that will not tie up excessive server resources or create security risks due to untested code. DWNI will remedy any such issues in a timely manor and work to ensure the detected issue is eliminated. However, shared hosting contains additional risks that sometimes can only be avoided with an account upgrade to a Dedicated Hosting package.
- 4.3. Remedy for Failure.** If after two (2) hours of discovering or being notified of any Excess Packet Loss or Latency or site unavailability, DWNI fails to remedy such issue, DWNI will credit Customer's account the pro-rated monthly Service Charge for such continuous Excess Packet Loss or Latency that follows the initial two (2) continuous hours, provided that all such credits will not exceed an aggregate maximum credit of monthly Service Charges otherwise due from Customer for one (1) calendar month for failures in any one (1) calendar month.
- 4.4. Credits.** Customer must notify DWNI within five (5) business days from the time Customer becomes eligible to receive a credit under this Section to receive such credit. Failure to comply with this requirement will forfeit Customer's right to receive a credit.



4.5. Limitation on Remedies. If Customer is entitled to multiple credits under this Section, such credits shall not be cumulative beyond a total of credits for one (1) calendar month in any one (1) calendar month for any event. Section 6 above states Customer's sole and exclusive remedy for any failure by DWNI to provide Services or adequate Service levels, including but not limited to any outages or Network congestion. DWNI's suspension or modification of Service in accordance with the terms of this Agreement shall not be deemed to be a failure of DWNI to provide adequate Service levels under this Agreement.

SECTION 5 | DISCLAIMER OF THIRD PARTY ACTIONS AND CONTROL

DWNI does not and cannot control the flow of data to or from the Network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inaction caused by these third parties can produce situations in which Customer connections to the Internet (or portions thereof) may be impaired or disrupted. DWNI cannot guarantee that such situations will not occur and, accordingly, DWNI disclaims any and all liability resulting from or related to such events. In the event that Customer's use of the Service or interaction with the Internet or such third parties is causing harm to or threatens to cause harm to the Network or its operations, DWNI shall have the right to suspend the Service. DWNI shall restore Service at such time as it reasonably deems that there is no further harm or threat of harm to the Network or its operations.

SECTION 6 | NO WARRANTY

DWNI makes no warranties or representations of any kind for the services being offered. The service is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title, non-infringement, or implied warranties of merchantability or fitness for a particular purpose. No advice or information given by DWNI or its agents or employees shall create a warranty. DWNI provides no warranty that the service will be uninterrupted or error free or that any information, software or other material accessible on the service is free from viruses or other harmful components. Under no circumstances shall DWNI be liable for any direct, indirect, special, punitive, or consequential damages that result in any way from your use of or inability to use the service, or for third parties' use of the service to access your Web space, or to access the Internet or any part thereof, or your or any third parties' reliance on or use of information, services, or merchandise provided on or through the service, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, or any failure of performance. If you are dissatisfied with DWNI service or any of its terms, conditions, rules, policies, guidelines or practices, your sole and exclusive remedy is to discontinue using the service (with appropriate notification as outlined in Section 12 below).

SECTION 7 | INDEMNIFICATION

7.1. By Customer. Customer will indemnify, defend and hold harmless DWNI, its directors, officers, employees, affiliates and customers (collectively, DWNI Covered Entities) from and against any and all claims, actions or demands brought against any DWNI Covered Entities alleging: (a) with respect to Customer's business: (i) infringement or misappropriation of any intellectual property rights; (ii) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity; or (iii) spamming or any other offensive, harassing or illegal conduct or violation of the Acceptable Use Policies or Anti-Spam Policy; (b) any loss suffered by, damage to or injury of any other DWNI customer, any other Customer's equipment or any other Customer's representatives, employees or agents, which loss, damage or injury is caused by or otherwise results from acts or omissions by Customer, Customer representative(s) or Customer's designees; (c) any personal injury suffered by any Customer representative, employee or agent arising out of such individual's activities related to the Services, unless such injury is caused by DWNI's negligence or willful misconduct; or (d) any other damage arising from the Customer's business, (collectively, Customer Covered Claims).



- 7.2. By DWNI.** DWNI will indemnify, defend and hold harmless Customer, its directors, officers, employees and affiliates (collectively, Customer Covered Entities) from and against any and all claims, actions or demands brought against any of the Customer Covered Entities alleging (i) infringement or misappropriation of any intellectual property rights relating to the Network or the Services (except to the extent such infringement is caused by Customer) or (ii) personal injury suffered by any DWNI representative, employee or agent, unless such injury is caused by Customer's negligence or willful misconduct (collectively, DWNI Covered Claims).

SECTION 8 | NOTICE PROCEDURE

DWNI will provide Customer with prompt written notice of each Customer Covered Claim of which DWNI becomes aware, and, at DWNI's sole option, DWNI may elect to participate in the defense and settlement of any Customer Covered Claim, provided that such participation shall not relieve Customer of any of its obligations under this Section. Customer shall have the right to control the defense of any Customer Covered Claim. Customer will provide DWNI with prompt written notice of each DWNI Covered Claim of which Customer becomes aware, and at Customer's sole option, Customer may elect to participate in the defense and settlement of DWNI Covered Claim, provided that such participation shall not relieve DWNI of any of its obligations under this Section. DWNI shall control the defense of any DWNI Covered Claim.

SECTION 9 | TERM

All Shared Hosting packages are billed/purchases on a monthly basis and will automatically renew for additional periods of one (1) month unless Customer provides the other written notice that it is terminating such Quote not more than 90 days and not less than 30 days prior to the end of the month, or by DWNI as provided in Section 10b below.

SECTION 10 | TERMINATION

- 10.1 By Customer.** Customer may cancel services at any time by giving DWNI at least thirty (30) days written notice by email to billing@digitalwest.net or by fax (confirmation required) to (805) 781-9379. Customer must state expressly which service(s) are to be terminated (hosting, email, domain registration, etc) for termination to be considered acceptable. DWNI may request further clarification from Customer if required for accurate cancelation.
- 10.2 By DWNI.** DWNI may suspend Service to Customer if any amount due hereunder is not paid in full within five (5) days after Customer is given notice of nonpayment. To reinstate Service, DWNI will require payment in full of any amounts due for services rendered, and may require a reconnection fee (not to exceed \$100.00). DWNI may terminate this Agreement if any amount due hereunder is not paid in full within ten (10) days after Customer is given notice of nonpayment. If payment has not been made after thirty (30) days since notice of nonpayment, DWNI may take over ownership and/or sell such property to make up the Customer's balance due
- 10.3 Bankruptcy.** DWNI may terminate this Agreement upon written notice to Customer if Customer becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, or liquidation for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing.
- 10.4 For Other Cause.** Except as otherwise stated, either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice of the same.



10.5 Effect of Termination. Upon termination of this Agreement DWNI will cease providing Services and any and all Customer payment obligations under this Agreement, including but not limited to monthly Service Charges through the end of the month, will become due in full immediately.

SECTION 11 | ACCEPTABLE USE POLICY

Customer will at all times comply with and conform its use of the Service to the DWNI Acceptable Use Policy (AUP) and DWNI Anti-SPAM Policy (set forth at DWNI's web site, <https://support.digitalwest.net/KB/a136/what-is-the-aup-acceptable-use-policy.aspx>), as updated from time to time. It is Customer's sole responsibility to periodically review DWNI's AUP for any revisions. In the event Customer violates DWNI's (i) Acceptable Use Guidelines where DWNI determines in its reasonable discretion that there is potential harm to its Network or business, or (ii) Anti-SPAM Policy, DWNI shall have the right to immediately suspend Service. DWNI will provide notice and opportunity to cure, if and to the extent DWNI deems practicable, depending on the nature of the violation and availability of the Customer. DWNI, in its reasonable discretion, may re-enable the Service upon satisfaction that all violations have ceased and with adequate assurance that such violations will not occur in the future.

SECTION 12 | "UNLIMITED" HOSTING

Digital West's shared hosting solution has specifically been designed to serve the web hosting needs of small and businesses and organizations. Since you will be hosting your website with hundreds of others on our servers in a virtual community, our offerings are really not intended to support enterprise level requirements. For that, we recommend purchasing at least a private virtual server or dedicated server solution.

Digital West's hosting is a shared web hosting service, which ultimately means a number of customers' websites are hosted within the same server environment. To ensure that our hosting is first-class, reliable, and available to all customers within that server community, an individual customer's website usage cannot adversely affect the performance of other customers' sites. We monitor our servers 24/7/365 and in no way can one customer adversely affect the performance of that server. If this happens, we will take preventative measures to ensure that the entire community is protected.

Lastly, our web hosting service is intended to host websites, not backup or storage facility for users' data. Using your web hosting account primarily as an online storage space for archiving electronic files and images is strictly prohibited. Our servers are for web hosting usage only.

What is "unlimited"?

Unlimited disk space: Create a website as large as you like, hundreds or thousands of web pages; you will not be penalized for exceeding any upper or ceiling limit. However, please realize that there are many other users on your server and growing a website very large too fast will impede the performance of that server, as using too many server resources will negatively impact other customers on that server. We will place some constraints on how fast you can grow that website and monitor the server resources closely. The vast majorities of our customers' sites grow at rates well within our rules, however, and will not be impacted.

Unlimited data transfer: This rule only comes into play when you use excess server processing power that negatively impacts the performance of the server and provides a bad customer experience in that server community. Minimizing the impact on an individual server's processing power is key to the overall performance that server. In the vast majority of cases, if you use the web hosting service appropriately, visitors to your website will be able to view, download, and add as much content from your site as they wish. However, in certain circumstances, our server processing power, server memory, or anti-abuse controls could limit downloads or access from your site. Violators to the above rule will not be tolerated. You can upload all the content that you require each month subject to the rules as outlined above.



SECTION 13 | OTHER POLICIES

In addition to the terms and conditions set forth in this Agreement, the purchase of services may make other DWNI policies applicable to you and the use of our services. In making a purchase of our services, you agree to the terms set forth in these policies. DWNI reserves the right to make changes to these policies at any time.

SECTION 14 | SURVIVAL

The Parties respective representations, warranties, and covenants, together with obligations of indemnification, confidentiality and limitations on liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect.

SECTION 15 | MICELLANEOUS PROVISIONS

15.1 Force Majeure. Other than with respect to failure to make payments due, neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control.

15.2 Confidentiality. Each party agrees that all information furnished to it by the other party, or information of the other party to which it has access under this Agreement, shall be deemed the confidential and proprietary information (collectively referred to as Confidential Information) of the Disclosing Party and shall remain the sole and exclusive property of the Disclosing Party (the party furnishing the Confidential Information referred to as the Disclosing Party and the other Party referred to as the Receiving Party). Each party shall treat the Confidential Information and the contents of this Agreement, including Exhibit A, in a confidential manner, shall use such information only to the extent necessary to perform its obligations hereunder, and, neither party may directly or indirectly disclose the same to anyone other than its employees on a need to know basis and who agree to be bound by the terms of this Section, without the written consent of the Disclosing Party. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; (iv) is independently developed by the Receiving Party; or (v) is required to be released by law or regulation, provided that the Receiving Party provide prompt written notice to the Disclosing Party of such impending release, and the Receiving Party cooperate fully with the Disclosing Party to minimize such release.

15.3 Marketing. Customer shall allow DWNI to promote Customer's business through a joint press release, advertising, and other DWNI marketing literature regarding use of the Services subject to Customer review and approval.

15.4 Government Regulations. Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.



15.5 Assignment. Neither party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, except to an affiliate or a party that acquires substantially all of the assigning party's assets or a majority of its stock as part of a corporate merger or acquisition. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

15.6 Notices. Any required notice hereunder may be delivered electronically to support@digitalwest.net or billing@digitalwest.net, or sent by confirmed facsimile. Such notice will be deemed to have been given as of the date it is confirmed delivered (by email or fax time stamp).

15.7 Relationship of Parties. This Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.

15.8 Changes Prior to Execution. Customer represents and warrants that any changes to this Agreement made by it were properly marked as changes and that Customer made no changes to the Agreement that were not properly identified as changes.

15.9 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles.

SECTION 16 | GENERAL

This Agreement, together with DWNl policies referred to in this Agreement, is the complete agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any other agreement or understanding, written or oral. This Agreement may be modified only through a written instrument signed by both parties. Should any provision of this Agreement be declared void or unenforceable, such provision will be deemed amended to achieve as nearly as possible the same economic effect as the original terms and the remainder of this Agreement will remain in full force and effect. If a conflict arises between a party's pre-printed business form and this Agreement, this Agreement will take precedence. In the case of international, federal, state or local government orders, Customer purchase order must contain the following language: Notwithstanding any provisions to the contrary on the face of, in attachments to, or on the reverse side of this purchase order, this purchase order is being used for administrative purposes only and this purchase order is placed under and subject solely to the terms and conditions of the DWNl Internet Services and Shared Hosting Agreement executed between Customer and DWNl.