



Terms Of Service Agreement

1. Term and Payment for Services

1.1. Term. This Agreement shall be in effect for an "Initial Term" as specified by you when you submit the electronic order form at the time you register for the Services. This Agreement will be automatically renewed (the "Renewal Term") at the end of the Initial Term for the same period as specified in the Initial Term unless you change the Renewal Term using the online control panel or cancel your service in accordance with our current cancellation policy posted on our website. The "Initial Term" for all dedicated server and dedicated server add-on equipment (i.e. memory, processors, disk drives) shall have a minimum "Initial Term" of (3) three months. Upon canceling the Services, you may be asked to provide ASPwebhosting.com with personally identifiable information so that ASPwebhosting.com may properly identify you as a person authorized to cancel your account. Any notice of termination will be effective upon receipt of the cancellation request electronically via our website or by telephone to our billing department.

1.2. Termination Policy. If you terminate the Services prior to the end of the Initial Term or the Renewal Term, whichever is then applicable, any payment due to ASPwebhosting.com or refund due to Customer will be governed by the current cancellation policy posted on our website and will be based upon the current plan type for your service. The posted cancellation policy will govern all payments due. You acknowledge and agree that Termination of your account for violation of ASPwebhosting.com's Acceptable Use Policy constitutes your waiver of any refund due even if you have made a prepayment. You agree to provide ASPwebhosting.com a 30 day advance notice of your intent to cancel your service.

1.3 Default and Cure. In the event that either party hereto defaults in the performance of any of its material duties or obligations under this Agreement, including failure to make any payments due under this Agreement, and such default is not cured within ten (10) days after written notice is given to the defaulting party specifying the default, then the party not in default, after given written notice thereof to the defaulting party, may terminate this Agreement.

1.4. Billing Cycles. ASPwebhosting.com provides customers several billing cycles from which to choose when signing up for service, including, but not limited to (a) monthly billing, (b) quarterly billing, and (c) annual billing. ASPwebhosting.com will bill Customer on a recurring basis according to the billing cycle selected by the Customer. The Customer may change the billing cycle using the online control panel at any time prior to the next billing period. The Customer understands that ASPwebhosting.com has no obligation to refund any prepayment made by the Customer should the customer choose to change the billing cycle after a payment has been made.

1.5. Charges. You agree to pay for all charges attributable to your use of the Services at the then current ASPwebhosting.com prices, which shall be exclusive of any applicable taxes. You are responsible for the payment of all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the Services, other than taxes based on ASPwebhosting.com's net income.

1.6. Payment. All charges for Services must be paid in advance according to the then current prices applicable to the Services. Upon entering this Agreement, you choose to pay by direct charge to a credit or debit card and receive an electronic receipt for each transaction processed by ASPwebhosting.com. If you choose to pay by credit or debit card upon registering for the Services, you thereby authorize ASPwebhosting.com to charge your credit or debit card to pay for any charges that may be attributed to your use of the Services. You agree that ASPwebhosting.com may accumulate any supplemental charges, incurred by you in your use of the Services ("Supplemental Charges") until such charges exceed \$10 and then charge your account. You must notify ASPwebhosting.com of any changes to your card account (including, without limitation, applicable account number or cancellation or expiration of the account), your billing address, or any information that may prohibit ASPwebhosting.com from charging your account. If you fail to pay any fees and taxes within seven (7) days from applicable due date for credit card payments, the Customer account shall be put into a suspension period of an additional seven (7) days. During this time Customer access to the services may be restricted. If during this seven (7) day suspension period, Customer provides valid payment information and pays the balance due in-full, service will be reinstated upon the processing of the new payment information. In addition, your failure to fully pay any fees and taxes within fourteen (14) days after the applicable due date will be deemed a material breach of this Agreement, justifying ASPwebhosting.com's suspension of its performance of the Services and/or termination of this Agreement. You are responsible for any fees associated with reinstatement of Services. Any such suspension or termination would not relieve you from paying past due fees plus interest. In the event of collection enforcement, you will be liable for any costs associated with such collection, including, without limitation, reasonable attorneys' fees, court costs and collection agency fees.

1.7. Discounts. Discounts may be available for customers making semi-annual and annual prepayments. Discounts are only applicable for customers who complete the entire term of service. Discounts for pre-payments

are not available for accounts who are not in good standing, and are required to pre pay due to poor payment history.

2. Use of Services

2.1. **Applicable Use Policy.** The ASPwebhosting.com Acceptable Use Policy (the "AUP") governs the general policies and procedures for use of the Services. The AUP is posted on ASPwebhosting.com's Web site (or such other location as ASPwebhosting.com may specify) and may be updated from time-to-time. YOU SHOULD CAREFULLY READ THE AUP. BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THE AUP AND ANY MODIFICATIONS. ASPWEBHOSTING.COM RESERVES THE RIGHT TO TERMINATE YOUR ACCOUNT FOR ANY VIOLATION OF THE AUP OR THIS AGREEMENT.

2.2. **Material and Product Requirements.** Unless we have agreed otherwise in a separate agreement, you must ensure that all material and data placed on ASPwebhosting.com's equipment is in a condition that is "server-ready," which is in a form requiring no additional manipulation by ASPwebhosting.com. ASPwebhosting.com will make no effort to validate any of this information for content, correctness or usability. If your material is not "server-ready", ASPwebhosting.com has the option at any time to reject this material. ASPwebhosting.com will notify you of its refusal of the material and afford you the opportunity to amend or modify the material to satisfy the needs and/or requirements of ASPwebhosting.com. Use of the Services requires a certain level of knowledge in the use of Internet languages, protocols and software. This level of knowledge varies depending on the anticipated use and desired content of your Web site. You must have the necessary knowledge to create and maintain a Web site. It is not ASPwebhosting.com's responsibility to provide this knowledge or customer support outside of the Services agreed to by you and ASPwebhosting.com.

2.3. **Bandwidth and Storage Usage.** You agree that use of the Services under this Agreement will not exceed the bandwidth and storage usage limits as described on our website for your current plan type. If you use any bandwidth or storage space in excess of the agreed upon number of megabytes per month, you agree to pay the associated additional charges.

2.3.1. **Disk Space Management.** You agree that ASPwebhosting.com may utilize certain tools both automated and manual in design that allow ASPwebhosting.com's support staff to maximize the efficiency of disk space utilization within Customers account space. These tools will be used to compress and archive customer log files for the account for the purpose of maximizing useable disk space within the account. If Customer requires archived data for statistical analysis purposes or for local copy retention, customer may request that an archived log file set be provided by the ASPwebhosting.com support staff. The default schedule for archiving of customer log files is set at one (1) day. and archives are stored on an archive server every one (1) week. You agree that ASPwebhosting.com has no liability to you in the event any customer log file is not available to you at any particular time.

2.3.2 **Email Services.** You agree that ASPwebhosting.com has the right to purge email messages from all email boxes when the email has been stored for 30 days or more. You agree that it is your responsibility to download and archive email messages and ASPwebhosting.com has no responsibility to you for storing any email message. You also understand and agree that email messages may be lost, improperly routed, improperly delivered, inadvertently deleted or not delivered at all. You agree that ASPwebhosting.com has no liability to you for the delivery of email, failure to deliver email, failure to store email or any other circumstance upon which an email may not be available to you. You also agree to abide by our acceptable use policy with regards to email services.

2.3.3 **Advertising via SPAM.** You agree that you will not advertise your website via Unsolicited Commercial Email (UCE or SPAM). You agree you will not permit any third party or affiliate to advertise your website or services via UCE or SPAM. You also agree that ASPwebhosting.com may take any action it deems necessary to protect its network and/or services from being disrupted or blocked due to your website being advertised by UCE or SPAM, including, but not limited to the following actions: interruption of service, cancellation of service without obligation of refund.

2.3.4 **Spam Filtering Services.** You agree that ASPwebhosting.com has the right to purge messages determined to be spam from all Spam Folders in your email boxes when the email has been stored for 7 days or more. You understand and agree that email messages may be lost, improperly routed, improperly delivered, inadvertently deleted or not delivered at all. You agree that ASPwebhosting.com has no liability to you for the delivery of email, failure to deliver email, failure to store email or any other circumstance upon which an email may not be available to you. You also agree to abide by our acceptable use policy with regards to email services.

2.4. **Load Balanced Server Uptime guarantee.** ASPwebhosting.com shall make all reasonable attempts to provide 100% Service availability ("Uptime"). Uptime, for the purposes of this section, is defined as maintaining at least one server in the Load Balanced System to ensure application availability, and is not defined as an individual server. This uptime shall be monitored by ASPwebhosting.com, and upon customer request, a written summary of any downtime incurred within the previous month shall be provided to the customer. The 100% uptime shall be monitored and computed as the aggregate uptime of each calendar month. In the case that ASPwebhosting.com fails to provide uptime equal to 99.9993% during any calendar month, upon receipt of a written request from customer, ASPwebhosting.com shall issue customer a credit for service up to, but not exceeding the amount paid by customer for the Services, excluding any fees for bandwidth, excess disk space, labor or other charges not included in the customers selected plan. In no event, shall the credited amount for any period of unscheduled downtime exceed the amount paid to ASPwebhosting.com in one calendar month for the base services provided for the customers selected plan type.

2.5. **Dedicated Server Uptime guarantee.** ASPwebhosting.com shall make all reasonable attempts to provide 100% Service availability ("Uptime"). This uptime shall be monitored by ASPwebhosting.com, and upon customer request, a written summary of any downtime incurred within the previous month shall be provided to the

customer. The 100% uptime shall be monitored and computed as the aggregate uptime of each calendar month. In the case that ASPwebhosting.com fails to provide uptime equal to 99.993% during any calendar month, upon receipt of a written request from customer, ASPwebhosting.com shall issue customer a credit for service up to, but not exceeding the amount paid by customer for the Services, excluding any fees for bandwidth, excess disk space, labor or other charges not included in the customers selected plan. In no event, shall the credited amount for any period of unscheduled downtime exceed the amount paid to ASPwebhosting.com in one calendar month for the base services provided for the customers selected plan type.

2.6. Shared Uptime Guarantee. ASPwebhosting.com shall make all reasonable attempts to provide 100% Service availability ("Uptime"). The 100% uptime shall be monitored and computed as the aggregate uptime of each calendar month. In the case that ASPwebhosting.com fails to provide uptime equal to 99.93% during any calendar month, upon receipt of a written request from customer, ASPwebhosting.com shall issue customer a credit for service up to, but not exceeding the amount paid by customer for the Services, excluding any fees for bandwidth, excess disk space, labor or other charges not included in the customers selected plan. In no event, shall the credited amount for any period of unscheduled downtime exceed the amount paid to ASPwebhosting.com in one calendar month for the base services provided for the customers selected plan type.

2.7. ASPwebhosting.com may from time to time schedule maintenance periods resulting in Service interruptions. These maintenance periods will be announced in advance via e-mail to the primary technical contact for the account. Unless an exemption request is provided in writing from customer within 24 hours of the time the maintenance notice is sent by ASPwebhosting.com, customer agrees these maintenance periods shall be exempt from the uptime guarantee contained herein, and a credit will be provided only in the event that the scheduled downtime extends beyond the announced maintenance window. ASPwebhosting.com agrees to make all reasonable effort to limit direct maintenance on customer equipment to no more than two (2) times each month. The preferred maintenance window will be Sunday morning from 12:01AM EST to 2:01AM EST. Customer acknowledges that ASPwebhosting.com may from time to time be required to perform emergency maintenance activities, including, but not limited to, installing security patches, service packs and other related updates to hardware and software, to the network and supporting equipment. Customer agrees that these emergency maintenance activities fall outside of the scope of customer operated equipment and may lead to downtime and latency beyond the control of ASPwebhosting.com. Customer waives all claims relating to these unannounced indirect maintenance outages.

3. Enforcement

3.1. Investigation of Violations. ASPwebhosting.com may investigate any reported or suspected violation of this Agreement, its policies or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, employees, customers and/or third parties. ASPwebhosting.com will not access or review the contents of any e-mail or similar stored electronic communications except as required or permitted by applicable law or legal process or permitted by the owner of said e-mail or stored electronic communications.

3.2. Actions. ASPwebhosting.com reserves the right and has absolute discretion to restrict or remove from its servers any content that violates this Agreement, the AUP or related policies or guidelines, or is otherwise objectionable or potentially infringing on any third party's rights or potentially in violation of any laws. If ASPwebhosting.com becomes aware of any possible violation by you of this Agreement, the AUP or any related policies or guidelines, third party rights or laws, ASPwebhosting.com may immediately take corrective action, including, but not limited to, (a) issuing warnings, (b) suspending or terminating the Service, (c) restricting or prohibiting any and all uses of content hosted on ASPwebhosting.com's systems, and/or (d) disabling or removing any hypertext links to third-party Web sites, any of your content distributed or made available for distribution via the Services, or other content not supplied by ASPwebhosting.com which, in ASPwebhosting.com's sole discretion, may violate or infringe any law or third-party rights or which otherwise exposes or potentially exposes ASPwebhosting.com to civil or criminal liability or public ridicule. It is ASPwebhosting.com's policy to terminate repeat infringers. ASPwebhosting.com's right to take corrective action, however, does not obligate us to monitor or exert editorial control over the information made available for distribution via the Services. If ASPwebhosting.com takes corrective action due to such possible violation, ASPwebhosting.com shall not be obligated to refund to you any fees paid in advance of such corrective action, nor does such action eliminate customer responsibility to pay for Services rendered but not yet paid, including, but not limited to, excess bandwidth charges, excess disk space usage, labor or other related services.

3.3. Disclosure Rights. To comply with applicable laws and lawful governmental requests, to protect ASPwebhosting.com's systems and customers, or to ensure the integrity and operation of ASPwebhosting.com's business and systems, ASPwebhosting.com may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e., name, e-mail address, etc.), IP addressing and traffic information, usage history, and content residing on ASPwebhosting.com's servers and systems. ASPwebhosting.com also reserves the right to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties.

4. Intellectual Property Rights

4.1. Your License Grant to ASPwebhosting.com. You hereby grant to ASPwebhosting.com a non-exclusive, worldwide, and royalty-free license for the Initial Term and any Renewal Term to use your content as necessary for the purposes of rendering and operating the Services to you under this Agreement. You expressly (a) grant to ASPwebhosting.com a license to store, cache or archive materials distributed or made available for distribution via the Services, including content supplied by third parties, and (b) agree that such storing, caching and archiving is not an infringement of any of your intellectual property rights or any third party's intellectual property rights.

4.2. ASPwebhosting.com Materials and Intellectual Property. All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by ASPwebhosting.com or its suppliers or agents pursuant to this Agreement, and any know-how, methodologies, equipment, or processes used by ASPwebhosting.com to provide the Services to you, including, without limitation, all copyrights, trademarks, patents, trade secrets and other proprietary rights are and will remain the sole and exclusive property of ASPwebhosting.com or its suppliers, including but not limited to any software programs, inventions, products and/or technology innovations and methodologies utilized, developed, or disclosed by ASPwebhosting.com during the term of this Agreement. Unauthorized copying, reverse engineering, decompiling, and creating derivative works based on the any such software is expressly forbidden except as permitted in this Agreement. You may be held legally responsible for violation of any patent rights, copyright or trade secret rights that is caused or encouraged by failure to abide by the terms of this Agreement.

4.3. Trademarks. You hereby grant to ASPwebhosting.com a limited right to use your trademarks, if any, for the limited purpose of permitting ASPwebhosting.com to fulfill its duties under this Agreement. This is not a trademark license and no other rights relating to the trademarks are granted by this Agreement. Specifically, but without limitation, the rights granted by this Agreement do not include the right to sublicense use of your trademarks or to use your trademarks with any other products or services outside the scope of the Services provided under this Agreement. The limited trademark use rights granted under this section terminate upon termination of this Agreement.

5. Warranty; Warranty Disclaimer.

5.1. Customer and/or Third Party Acts. ASPwebhosting.com is not responsible in any manner for any nonconforming Services to the extent caused by you or your customers. In addition, ASPwebhosting.com is not responsible for loss or corruption of data in transmission, or for failure to send or receive data due to events beyond ASPwebhosting.com's reasonable control.

5.2. No Express or Implied Warranty. ALL SERVICES, SYSTEMS AND PRODUCTS PROVIDED BY ASPWEBHOSTING.COM UNDER THIS AGREEMENT ARE PROVIDED WITHOUT ANY EXPRESS OR IMPLIED WARRANTY IN FACT OR IN LAW, WHATSOEVER. YOU ACKNOWLEDGE AND AGREE THAT ASPWEBHOSTING.COM EXERCISES NO CONTROL OVER, AND ACCEPTS NO RESPONSIBILITY FOR, THE CONTENT OF THE INFORMATION PASSING THROUGH ASPWEBHOSTING.COM'S COMPUTERS, NETWORK HUBS AND POINTS OF PRESENCE, OR THE INTERNET. ASPWEBHOSTING.COM DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. ALL SERVICES PERFORMED UNDER THIS AGREEMENT ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING, WITHOUT LIMITATION, ANY FAILURE DUE TO COMPUTER HARDWARE OR COMMUNICATION SYSTEMS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ASPWEBHOSTING.COM DOES NOT MAKE AND HEREBY DISCLAIMS, AND YOU HEREBY WAIVE ALL RELIANCE ON, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONDITIONS OF QUALITY, AND ANY WARRANTIES WITH RESPECT TO PATENT, COPYRIGHT, TRADE SECRET OR TRADEMARK INFRINGEMENT.

5.3 Your Warranties and Representations to ASPwebhosting.com. You warrant, represent, and covenant to ASPwebhosting.com that (a) you are at least eighteen (18) years of age or are a duly organized and validly existing entity; (b) you possess the legal right and ability to enter into this Agreement; (c) you will use the Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines; (d) you will be financially responsible for the use of your account; (e) you have acquired or will acquire all authorization(s) necessary for hypertext links to third-party Web sites or other content; (f) you have verified or will verify the accuracy of materials distributed or made available for distribution via the Services, including, without limitation, your content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted, and (g) your content does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

6. Limitation and Exclusion of Liability

6.1. Limitations. IN NO EVENT SHALL ASPWEBHOSTING.COM HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. ASPWEBHOSTING.COM SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF ASPWEBHOSTING.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF ASPWEBHOSTING.COM TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE

AMOUNT ACTUALLY PAID TO ASPWEBHOSTING.COM BY YOU UNDER THIS AGREEMENT DURING THE THIRTY (30) DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY ASPWEBHOSTING.COM UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU HEREBY RELEASE ASPWEBHOSTING.COM FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIM IN EXCESS OF THE LIMITATION STATED IN THIS SECTION 6.1. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES, OUR LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW.

6.2. Interruption of Service. You hereby acknowledge and agree that ASPwebhosting.com will not be liable for any temporary delay, outages or interruptions of the Services. Further, ASPwebhosting.com shall not be liable for any delay or failure to perform its obligations under this Agreement, where such delay or failure results from any act of God or other cause beyond its reasonable control (including, without limitation, any mechanical, electronic, communications or third-party supplier failure).

7. Indemnification. You will defend, indemnify and hold harmless ASPwebhosting.com and its officers, directors, shareholders, employees, consultants, agents, affiliates and suppliers (an "Indemnitee") from any and all threatened or actual claims, demands, causes of action, suits, proceedings (formal or informal), losses, damages, fines, penalties, liabilities, costs and expenses of any nature, including attorneys' fees and court costs, sustained or incurred by or asserted against any Indemnitee by any person, firm, corporation, governmental authority, partnership or other entity by reason of or arising out of or relating to: (i) your violation or breach of any term, condition, representation or warranty of this Agreement or any applicable policy or guideline; (ii) your conduct, including but not limited to your negligence, gross negligence, or willful misconduct; (iii) your improper or illegal use of the Services; (iv) any claim by a former employee of yours whose employment has been or may be terminated in connection with or as a result of the execution of this Agreement and performance of the Services by ASPwebhosting.com; or (iii) any claim relating to your services or products, including but not limited to advertising, product liability claims or infringement of any trademark, copyright, patent, trade secrets or non-proprietary right of a third party (including, without limitation, defamation, libel, or violation of privacy or publicity).

8. Miscellaneous

8.1 Confidentiality. The parties each agree that all Confidential Information (as defined below) communicated to it by the other is done so in confidence and will be used only for the purposes of this Agreement and will not be used to compete with the other party or disclosed to any third party without the prior written consent of the other party except as permitted under this Agreement. "Confidential Information" means all information in any form, including, without limitation, printed or verbal communications and information stored in printed, optical or electromagnetic format, which relates to the Services; or computer, data processing or electronic commerce programs and software; electronic data processing applications, routines, subroutines, techniques or systems; information which incorporates or is based upon proprietary information of either party; or information concerning business or financial affairs, product pricing, financial conditions or strategies, marketing, technical systems of either party; or any information concerning customers or vendors of either party; or any data exchange between a party and any customers or vendors. Exceptions to Confidential Information include (1) information in the public domain; (2) information developed independently by a party without reference to information disclosed under this Agreement; or (3) information received from a third party without restriction and/or breach of this or a similar Agreement. It is not a violation of this provision to disclose Confidential Information in compliance with any legal, accounting or regulatory requirement beyond the control of either Party or, but in such case, prior to disclosure, the disclosing Party shall give written notice to the other Party to permit that Party an opportunity to challenge such disclosure. If either Party is subpoenaed, such Party shall give written notice to the other Party to permit that Party an opportunity to challenge the disclosure of Confidential Information. Upon the termination of this Agreement and upon written request of the disclosing Party, each Party shall promptly return all Confidential Information of the other Party. This provision shall survive the termination of this Agreement for two (2) years.

8.2. Notices. All notices, reports, requests, or other communications given pursuant to this Agreement shall be made in writing, shall be delivered by hand delivery, overnight courier service, fax, or electronic mail, shall be deemed to have been duly given when delivered.

8.3. Choice of Law and Forum. THIS AGREEMENT, WILL BE GOVERNED BY THE LAWS OF THE UNITED STATES AND THE STATE OF KENTUCKY, WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS. ANY ACTION RELATING TO THIS AGREEMENT MUST BE BROUGHT IN THE FEDERAL OR STATE COURTS LOCATED IN KENTUCKY, AND YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF SUCH COURTS.

8.4. Entire Agreement. This Agreement and all policies and guidelines incorporated in this Agreement by reference constitutes the entire Agreement of the parties and may not be modified or altered orally but only by an agreement in writing signed by both parties.

8.5. No Fiduciary Relationship; No Third-Party Beneficiaries. ASPwebhosting.com is not the agent, fiduciary, trustee or other representative of you. Nothing expressed or mentioned in or implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions and provisions hereof are intended to be and are for the sole and exclusive benefit of the parties hereto.

8.6. Assignments. You may not transfer or assign your rights, duties, or obligations under this Agreement without ASPwebhosting.com's prior written consent. ASPwebhosting.com may assign its rights and obligations under this Agreement and may utilize affiliate and/or agents in performing its duties and exercising its rights under this Agreement, without your consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assignees.

8.7. No Waiver. ASPwebhosting.com's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of ASPwebhosting.com's right to subsequently enforce such provision or any other provisions under this Agreement.

8.8. Severability. If any provision of this Agreement is deemed illegal, invalid, void or otherwise unenforceable in whole or in part, that provision shall be severed or shall be enforced only to the extent legally permitted, and the remainder of the provision and the Agreement shall remain in full force and effect. If any provision of this Agreement is deemed to be invalid, void or unenforceable only with respect to a particular application, such term or provision shall remain in full force and effect with respect to all other applications.

8.9. Survival. All provisions of this Agreement relating to your warranties, intellectual property rights, limitation and exclusion of liability, your indemnification obligations and payment obligations shall survive the termination or expiration of this Agreement.