



## MDS Hosting Services General Terms and Conditions

Last Updated 5-18-2009

1. This Hosting Services Agreement ("**Agreement**"), is the controlling document for all Customer's purchase and use of all Hosting Services and facilities, including but not limited to Web Hosting Services, Dedicated Server Hosting Services, Data Backup Services and the Server Colocation Hosting Services (collectively, the "**Services**"), as described in the online Order Form or Manual Order Form, that Customer executes and Managed Data Solutions, LLC ("**MDS**") accepts. Customer must accept the terms of this Agreement in order to use the Services. MDS may, at its sole discretion, modify any of the terms and conditions contained in this Agreement and any policy or guideline incorporated by reference. All modifications to this agreement and related agreements are effective upon posting of the revisions on the MDS Web site (the "**Site**"). Customer's continued use of the Services subsequent to MDS's posting of any modifications will be considered as Customer's acceptance of the modifications.
2. MDS has no control over, and accepts no responsibility for, the content of the information passing through MDS's host or collocated computers, (the "**MDS Network**"). EXCEPT AS EXPRESSLY SET FORTH IN SECTION 11 BELOW, MDS (a) MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, FOR THE SERVICES AND EQUIPMENT IT IS PROVIDING, AND (b) DISCLAIMS ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. Use of any information obtained via the MDS Network is at Customer's own risk. MDS specifically denies any responsibility for the accuracy or quality of information obtained through its services. MDS shall not be liable for any delay or failure in performance due to Force Majeure, which shall include without limitation acts of God, labor disputes, change in law, regulation or government policy, riots, war, fire, epidemics, acts or omissions of vendors or suppliers, equipment failures, transportation difficulties, or other occurrences which are beyond MDS's reasonable control.
3. The MDS Acceptable Use Policy ("**Use Policy**") states the general policies and procedures for use of the Services. MDS's Customer Privacy Statement ("**Privacy Statement**") describes how MDS collects, stores, processes and uses information associated with Customer's use of the Services. The Use Policy and the Privacy Statement are posted within the MDS Web site located at <http://www.mdatasol.com> (or such other location as MDS may specify) and may be updated from time-to-time. CUSTOMER SHOULD CAREFULLY READ THE USE POLICY. BY USING THE SERVICES, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THE USE POLICY AND ANY MODIFICATION OF THE USE POLICY. MDS MAY TERMINATE CUSTOMER'S ACCOUNT FOR ANY VIOLATION OF THE USE POLICY OR THIS AGREEMENT.
4. It is the responsibility of the customer that all material and data placed on MDS's hosting equipment be in a "server-ready" condition, requiring no additional action by MDS. MDS will make no effort to validate any customer information for content, correctness or usability as the customer will have direct access to accomplish these actions. Customer must have the necessary knowledge to create and maintain a Web site or additional skills required for the services being used. MDS can provide this knowledge or customer support outside of the Services if desired by the customer.
5. Customer agrees that they will not exceed the bandwidth, storage, or E-mail usage limits as specified in the online Order Form or Manual Order Form. If Customer exceeds any agreed upon bandwidth, storage, or E-mail usage limits, MDS may, in its sole discretion, assess Customer with additional charges, suspend the Service if such action violates our Use Policy, or terminate this Agreement if required. If MDS elects to take any corrective action, MDS will not refund any prepaid fees. Customer's use of Customer's account and access to it is Customer's responsibility.
6. MDS assumes no responsibility for any encrypted data that is sent to, collected on, or retrieved from any MDS server or equipment. The technology used to encrypt data being transmitted to or from MDS's servers will be licensed from a third party and MDS makes no claims or warranties regarding the viability, integrity, or robustness of the encryption used. Further, MDS is not responsible for the success or failure of the Secure Server to properly encrypt data. By using the Secure Server, Customer assumes the risk that the encryption algorithm may be broken so that the data being transmitted is visible to others. MDS assumes no responsibility for any commercial transactions attempted or completed involving any MDS service or third party software and other products and services designed to enable such transactions used by Customer. Customer's rights and obligations with respect thereto are subject solely to any agreement(s) between Customer and third party.
7. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES FOR LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS. Notwithstanding anything to the contrary stated in this Agreement, Customer's sole remedies for any claims relating to this service or the MDS Services are set forth in Section 11 below.



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8. Any Internet Protocol numbers ("**IP Numbers**") assigned to Customer by MDS in connection with the services shall be used only in connection with the service and are the sole property of MDS. In the event Customer discontinues use of the Services for any reason, or this Agreement expires or is terminated for any reason, customer's right to use the IP Numbers shall terminate.
9. MDS will invoice the Setup Charge(s), if applicable, as part of the first monthly billing. Billing of the Monthly Fee will commence when MDS is prepared to provide Customer password and login information, enabling installations of Customer's data files on the MDS server, or the Colocation server is connected to the MDS Network. Customer will pay all charges for Services in advance as agreed to on the order form for the Services. If Customer chooses to pay by credit card when registering for Services, Customer authorizes MDS to charge Customer's credit or debit card to pay for any charges that may apply to Customer's account. MDS may accumulate any supplemental charges, as described in the Order Form, that Customer incurs in Customer's use of the Services ("**Supplemental Charges**") until the charges exceed \$5 and then charge Customer's card. Customer must notify MDS of any changes to Customer's card account (including, applicable account number or cancellation or expiration of the account), Customer's billing address, or any information that may prohibit MDS from charging Customer's account. If Customer chooses to be invoiced for Services, MDS will send an invoice to Customer for the Services for the period for which Customer has registered for the Services. MDS may also send periodic invoices to Customer for any applicable Supplemental Charges associated with Customer's use of the Services or technical services provided at customer's request. Customer will pay to MDS the amount indicated in each invoice by the due date reflected on the invoice. MDS reserves the right to change the rates for Services by notifying Customer 30 days in advance of the effective date of the change. Services may be canceled only upon 30 days' advance written notice.
10. If payment is returned to MDS unpaid, Customer is immediately in default and subject to a returned payment charge of not less than \$25 from MDS. If Customer fails to pay any fees and taxes within 10 days from the applicable due date for credit card or invoice payments, MDS will assess late charges equal to the lesser of 1.5% per month or the maximum allowable under applicable law. Customer's failure to fully pay any fees and taxes within 10 days after the applicable due date is a material breach of this Agreement, justifying MDS in suspension or termination of its Services and terminating this Agreement for the services being provided. Such interruption does not relieve Customer of the obligation to pay the Monthly Fee. Only a written request to terminate Customer's service relieves Customer of the obligation to pay the continuing Monthly Fee and any subsequent billings. Accounts in default are subject to an interest charge on the outstanding balance of the lesser of, 1.5% per month, or the maximum rate permitted by law. If MDS terminates for Customer's material breach, Customer must still pay past due fees plus interest. Customer is responsible for any costs MDS incurs in enforcing collection, including reasonable attorneys' fees, court costs, or collection agency fees. If Customer reinstates Services, Customer must pay any fees associated with reinstating Services. In the event of early cancellation of a Term Commitment, Customer will be required to pay 75% of MDS's Monthly Fee for each month remaining in the Term Commitment.
11. The Service Level Agreement ("**SLA**") for the services, which is made a part of this Agreement, is set forth within MDS's web site located at <http://www.mdatasol.com> (or such other location as MDS may specify) and may be updated from time-to-time. MDS reserves the right to amend the SLA from time to time, effective upon posting of the revised SLA to the web site or other notice to Customer. Provided, that in the event of any amendment resulting in a material reduction of the SLA's service levels or credits, Customer may terminate this Agreement without penalty by providing MDS written notice of termination during the 30 days following posting of such amendment. The SLA sets forth Customer's sole remedies for any claim relating to the services, including any failure to meet any guarantee set forth in the SLA.
12. MDS may, at its sole discretion, investigate any reported violation of this Agreement, or its policies or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, customers or third parties. MDS 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.
13. MDS may restrict or remove from its servers or any related equipment, or collocated servers any content that violates this Agreement or related policies or guidelines, or is otherwise objectionable or potentially infringing on any third party's rights or that potentially violates any laws or potentially exposes MDS to civil or criminal liability or public ridicule. If MDS becomes aware that Customer has possibly violated this Agreement, or any related policies or guidelines, third party rights or laws, MDS may immediately take corrective action, as it deems appropriate. It is MDS's policy to terminate repeat violators. MDS will not refund to Customer any fees Customer paid in advance of the corrective action.



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14. To comply with applicable laws and lawful governmental requests, MDS may access and disclose any information it considers necessary or appropriate, to comply with such requests. MDS may report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. To the extent any inconsistency exists between any terms of MDS's Customer Privacy Statement and MDS's right to disclose under this section, MDS's right to disclose under this section will control.
15. Customer agrees to release and hold harmless, and agrees to indemnify MDS (and their respective employees, directors and representatives) against any and all claims, actions, proceedings, suits, liabilities, damages, settlements, penalties, fines, costs or expenses (including, reasonable attorneys' fees and other litigation expenses) incurred by MDS, arising out of or relating to any breach of this Agreement or the related agreements referenced herein.
16. Customer represents and warrants that he/she has full authority to enter into this agreement and is at least 18 years of age. Customer further represents it is not located in or associated with any country subject to United States embargoes or listed on the United States Treasury Departments list of specially designated nationals or listed on the United States Commerce Department denied persons list or entities list.
17. **THE LAWS OF THE UNITED STATES AND THE STATE OF OKLAHOMA GOVERN THIS AGREEMENT, 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 OKLAHOMA COUNTY, OKLAHOMA.**

**AGREED AND ACCEPTED BY CUSTOMER: (Signature is electronically accepted when ordering and accepted on line)**

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-Mail Address: \_\_\_\_\_