

WDY ENTERPRISES, LLC UNIVERSAL TERMS OF SERVICE

WDY Enterprises, LLC (WDYLLC) is an Ohio Domestic Limited Liability Company headquartered in Worthington, Ohio. WDYLLC is a provider of consulting, security, network hosting, electronic mail, automated data processing, and Internet services.

This document details the terms and conditions under which network hosting, electronic mail and Internet services will be provided to the Subscriber by WDYLLC. It is intended to be included by reference in any service contract a Subscriber enters into with WDYLLC. Any use of the Services offered constitutes your binding agreement and consent to all terms, notices, restrictions and conditions listed below.

1. **COMPENSATION TO WDYLLC.** All noted services, as described in the Service Agreement, shall be provided by the Subscriber during the term of the agreement for the fee agreed to in the service agreement. WDYLLC reserves the right to refuse service to any individual or organization having a balance due to WDYLLC to the extent permitted by law. Services provided to or paid for by businesses are subject to municipal, county, and state sales tax in Ohio unless appropriate copies of tax exemption documentation are provided with or prior to payment.
2. **PRIVACY AND CONFIDENTIALITY.** WDYLLC has a general privacy policy that details how and why it handles information. That policy is available for review at <http://www.wdyllc.com/privacy.html> and is incorporated herein by reference. It is subject to change at any time without notice. If at any time, the policy is not available at the aforementioned web site, a copy may be requested as described in section 7j, below.
3. **BEST EFFORT OPERATION.** Operation of Services is provided on a best effort basis. Technical support in relation to the services will be provided on a best effort basis. There may be periods where the service is unavailable for reasons outside the control of WDYLLC.
 - a) **EXPECTATIONS FOR RESPONSE TIME.** It is reasonable to expect a response for requests for support within 3 business days (WDYLLC recognizes the same holidays and business week as the government of the State of Ohio), unless a notice has been provided to the designated contact that responses may take a longer period of time or posted to our support website. Best reasonable effort will be used to ensure this service commitment is accomplished.
 - b) **ADDITIONAL FEES.** Any additional fees may be authorized by the Subscriber verbally when said fees total less than \$500 for any given instance or event, and must be authorized in writing by Subscriber if fees exceed \$500.
 - a) **ONGOING SUPPORT.** Support is offered at no charge, provided that such support can be provided through electronic mail to designated support addresses, or via online web forms and if the support can be offered through web-based or e-mail based communications. In-person and telephone support, if jointly scheduled in advance is offered at an time-based billable rate of \$55 per half-hour or part thereof, with a minimum fee of \$110 for on-site support. Support requiring "emergency response" (including, but not limited to those situations having less than 24-hours mutually accepted advance notice, on holidays, weekends, or after 6:00pm or before 9:00am weekdays) will be billed at an hourly rate of \$130 per hour or part thereof.
 - b) **EXPEDITED SERVICES.** Expediting service may be available for additional fees. Expedited service generally refers to administrative services that are disruptive to other workflows. Several examples of expedited services would include same-day payment processing, drop-off payment processing (not sent via U.S. mail), and FAXing or sending by U.S. mail documents that are on the web or which are normally e-mailed.
 - c) **TRANSIT.** Additional fees for transit time may apply for services which are not performed at our facilities.
 - c) **LIMIT OF REALM OF CONTROL.** WDYLLC utilizes and re-sells services outside its direct control. In circumstances where WDYLLC is a "middleman", consolidating services from one or more subcontracting companies, WDYLLC does not own, operate, or exercise direct control of such services and thus has a limited ability to influence the quality of service delivered.
4. **NOTIFICATION OF INTERRUPTIONS OR DISRUPTIONS TO SERVICE.** It is the policy and practice of WDYLLC to notify its subscribers of service interruptions and disruptions to services operated by WDYLLC, so that:
 - a) Planned outages longer than one hour will be announced with as much notice as reasonably possible.
 - b) Unplanned outages longer than one hour will be explained as part of a post-mortem investigation.
 - c) In the unlikely event of a security breach at WDYLLC, notification will be sent detailing the nature of the breach and

the perceived impact to the Services given to the Subscriber.

Notifications specific to hosting customers are generally sent via electronic mail to the designated contact, while notifications applicable to dial-up and e-mail only customers are posted under "News" at the WDYLLC web site, <http://www.wdyllc.com>. Notification by telephone and/or voice mail may occur in place of e-mail communication or via e-mail directly to affected users in place of public posting at the sole discretion of WDYLLC.

5. WARRANTIES, DISCLAIMERS, AND LIMITATIONS OF LIABILITY.

- a) Subscriber warrants that it has the legal authority to enter into this agreement and to perform all obligations under this agreement.
- b) WDYLLC warrants that it has the legal authority to enter into this agreement and to perform its obligations under this agreement.
- c) WDYLLC warrants and confirms that it will maintain best reasonable effort for the operation of Services. Such effort expressly DOES NOT include data or hardware backup, hot spare, high availability, or other data reliability processes or services.
- d) WDYLLC EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES. WDYLLC EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OR REPRESENTATIONS REGARDING THE ACCURACY, ADEQUACY, TRUTHFULNESS, TIMELINESS, COMPLETENESS, OR USEFULNESS OF THE SERVICES. WDYLLC MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE SERVICES AND ACCESS TO AND USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. SUBSCRIBERS ACKNOWLEDGE AND AGREE THAT THE CONTENTS, FEATURES, AND OTHER ASPECTS OF THE SERVICES MAY CHANGE FROM TIME TO TIME.
- e) WDYLLC's ENTIRE LIABILITY TO SUBSCRIBERS AND SUBSCRIBERS SOLE AND EXCLUSIVE REMEDY FOR DAMAGES OR ANY LOSS IN ANY WAY CONNECTED TO THE SERVICES SHALL BE LIMITED TO THE AMOUNT PAID TO WDYLLC FOR THE SERVICES GIVING RISE TO SUCH DAMAGE OR LOSS. UNDER NO CIRCUMSTANCES SHALL WDYLLC BE LIABLE TO SUBSCRIBERS OR ANY OTHER PERSONS (INCLUDING BUT NOT LIMITED TO AUTHORIZED USERS) FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DAMAGES ARISING OUT OF THE USE OF, OR THE INABILITY TO USE, THE SERVICES. THESE LIMITATIONS APPLY REGARDLESS OF WHETHER WDYLLC HAS BEEN ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY OF SUCH DAMAGES.
- f) Services are provided "AS IS." WDYLLC exercises no control over the content of the information contained on the servers or passing through its systems. WDYLLC specifically denies any responsibility for the accuracy or quality of information obtained through its services.
- g) DISCLAIMER AND LIMITATION OF COPYRIGHT IN THIS AGREEMENT. The Acceptable and Responsible Use section of this agreement is derived from the Ohio State University policy on acceptable use of University computing resources, http://cio.ohio-state.edu/policies/responsible_use.html. WDYLLC acknowledges the work of the Ohio State University's Office of the Chief Information Officer in developing clear and understandable guidelines for acceptable and responsible use of computing resources.

6. ACCEPTABLE AND RESPONSIBLE USE. Legitimate use of the Service does not extend to the limits of technical possibility. Although some limitations are built into WDYLLC systems, those limitations are not the sole restrictions on what is permissible. Any User (User refers to a Subscriber, individual, organization, process, or machine having been granted non-public access rights to systems owned by or hosted by WDYLLC) must abide by all applicable restrictions, whether or not they are built into the operating system or network and whether or not they can be circumvented by technical means.

- a) **LAWFUL PURPOSES.** Services may only be used for lawful purposes. Transmission of any material in violation of any U.S. or state regulation is expressly prohibited. This includes, but is not limited to: copyrighted material, material legally judged to be threatening or obscene, or material protected by trade secret.
- b) **SPECIAL RESPONSIBILITY OF SUBSCRIBERS.** In some instances, Subscribers may be empowered to assign non-public access rights to new Users. Any User designated by a Subscriber must be informed of and agree to his/her responsibility under this agreement; it is the special responsibility of the Subscriber to ensure that this occurs. In cases where a User has violated these terms of service, and that User was granted non-public access to

WDYLLC resources by Subscriber's account, WDYLLC may, in its sole discretion, hold the Subscriber responsible for the actions of the User and Subscriber would be subject to sanctions under section 6e of this agreement. This special responsibility is *in addition to* the User responsibility of a Subscriber.

c) RESPONSIBILITY OF USERS.

- i) All Users must comply with all federal, Ohio, and other applicable law; all generally applicable site rules and policies; and all applicable contracts and licenses. Examples of such laws, rules, policies, contracts, and licenses include the laws of libel, privacy, copyright, trademark, obscenity, as well as prohibitions on "hacking", "cracking" and other similar activities. Users who engage in electronic communications with persons in other states or countries or on other systems or networks should be aware that they may also be subject to the laws of those other states and countries and the rules and policies of those other systems and networks. Users are responsible for ascertaining, understanding, and complying with the laws, rules, policies, contracts, and licenses applicable to their particular uses.
- ii) Users may only use only those computing resources that they are authorized to use and use them only in the manner and to the extent authorized. Ability to access computing resources does not, by itself, imply authorization to do so. Users are responsible for ascertaining what authorizations are necessary and for obtaining them before proceeding. Accounts and passwords may not, under any circumstances, be shared with, or used by, persons other than those to whom they have been assigned.
- iii) The configuration, use, or management of User software and equipment are the responsibility of the User and must be resolved with User's effort and expense, so long as WDYLLC equipment and Service is functioning within normal service delivery parameters. Users must document and promptly report any suspected malfunctions in the Service to WDYLLC support via e-mail or phone (614-340-7907) within one calendar day of the occurrence to facilitate problem resolution.
- iv) Users must respect the online privacy of other Users of WDYLLC systems and services. Again, ability to access other persons' accounts does not, by itself, imply authorization to do so. Users are responsible for ascertaining what authorizations are necessary and for obtaining them before proceeding.
- v) Users bear the responsibility to protect themselves from harm on the Internet. As such, Users are responsible for being aware of computing threats and risks and taking reasonable precautions to prevent harm to themselves and to avoid being the conduit by which harm comes to others. This includes, but is not limited to, appropriate and proper use of modern, maintained, and up-to-date anti-virus software, personal firewall packages, anti-spyware software, operating system and application bugfixes/patches/service packs, and the exercise of reasonable care in the handling of executable content that arrives from unvalidated sources.
- vi) Users must recognize and respect the finite capacity of WDYLLC resources and limit use so as not to consume an unreasonable amount of those resources or to interfere unreasonably with the activity of other Users. Although there is no set bandwidth, disk space, CPU time, or other limit applicable to all uses of WDYLLC systems and services, the operators may require Users of those resources to limit or refrain from specific uses in accordance with this principle. The reasonableness of any particular use will be judged in the context of all of the relevant circumstances and shall be solely arbitrated by WDYLLC.

d) SPECIAL TERMS APPLICABLE TO DIAL-UP SERVICE USE

- i) Subscriber understands that WDYLLC is a "middleman" that uses some chain of subcontractors to provide dial-up services, and that this arrangement is the basis of the favorable pricing available to Subscriber. In this situation, Subscriber acknowledges that WDYLLC has no direct control over--and has limited ability to influence the quality of dial-up services--provided.
- ii) Subscriber agrees to allow WDYLLC or its subcontractors to enforce a 10 minute idle timeout and 5 hour maximum session on their dial-up account. Attempts to defeat the idle timer using a ping bot or other system tool, or the use of a redialer to automatically reconnect once disconnected is prohibited. Inactivity is defined as very low data transfer between the User's modem and the dial-up service.
- iii) Subscriber understands that, regardless of labeling on the service, that finite service has been contracted on behalf of Subscriber. Subscriber agrees that Services used shall fall below the level of "dedicated service" for dial-up. Dedicated service shall be defined as maintaining more than 225 channel hours over any 15 day usage period. Subscriber may be blocked from access to service and forced to upgrade to continue service if Subscriber's account is used to obtain dedicated service.
- iv) The right to use dial-up services is not transferable. Loaning User's account to others, operation of servers providing services to users over a dial-up link, connecting a system simultaneously used by multiple persons, group use of user log-ins, and consuming more than one modem line per User account simultaneously are explicitly prohibited.

e) ENFORCEMENT

- i) Users who violate these terms and conditions may be denied access to WDYLLC computing resources and may be subject to other penalties and disciplinary action, potentially including criminal or civil penalties. WDYLLC may refer suspected violations of applicable law to appropriate law enforcement agencies.
- ii) WDYLLC may temporarily suspend or block access to an account or service, prior to the initiation or completion of an investigation, when it reasonably and in good faith appears necessary to do so in order to protect the integrity, security, or functionality of WDYLLC or other computing resources or to protect WDYLLC from liability or loss.
- iii) Subscriber agrees to pay for WDYLLC's reasonable expenses, including but not limited to attorney and system administration fees, incurred in responding to complaints and damages arising from any violation of this agreement by Subscriber.

f) SECURITY AND PRIVACY

- i) WDYLLC employs various measures to protect the security of its computing resources and of their Users' accounts. Users should be aware, however, that WDYLLC can not guarantee such security. Users should therefore engage in "safe computing" practices by establishing appropriate access restrictions for their accounts, guarding their passwords, and changing them regularly.
 - ii) Use of WDYLLC computing resources is not completely private. WDYLLC may specifically monitor the activity and accounts of individual Users of WDYLLC computing resources, including individual login sessions and communications, without notice, when:
 - 1. The user has voluntarily made them accessible to the public, as by posting to Usenet, publically accessible mailing list, or a web page; or
 - 2. In the best judgment of WDYLLC that doing so appears necessary to protect the integrity, security, or functionality of site or other computing resources or to protect WDYLLC from liability; or
 - 3. WDYLLC in good faith believes, upon the basis of some evidence, that the user has violated, or is violating, this policy; or
 - 4. An account appears to be engaged in unusual or unusually excessive activity, as indicated by the monitoring of general activity and usage patterns; or
 - 5. With the consent of the Subscriber; or
 - 6. As otherwise required or permitted by law.
 - iii) WDYLLC may, in its discretion, disclose the results of any such general or individual monitoring, including the contents and records of individual communications, to appropriate law enforcement agencies or other network security investigators at other sites.
- g) UNSOLICITED BULK E-MAIL ("SPAM") IS EXPRESSLY PROHIBITED. Use of Services to send Unsolicited Bulk E-mail ("spam") is considered reasonable cause for immediate account termination. This restriction extends to spam sent from another service but referencing sites or accounts housed on WDYLLC servers. Subscriber agrees to pay WDYLLC its reasonable expenses, including attorney and system administration fees, incurred in responding to complaints and damages caused by the Subscriber (or Subscriber's sub-account) action of sending spam.

7. TERM OF AGREEMENT AND TERMINATION

- a) TERM. The term of this agreement shall begin upon the latest of: the beginning of the calendar day of the contract Start Date (12:00 midnight), payment in full for the service term, or the date of execution of this document and shall terminate at 11:59pm on the contract End Date. All times are listed in Greenwich Mean Time (GMT). During periods longer than 1 hour in which no service agreement is in effect, Subscriber understands that Services may be discontinued and that, as a result, any information stored on WDYLLC equipment may be permanently lost.
- b) TERMINATION FOR CAUSE. Either WDYLLC or the Subscriber may terminate this agreement if the other party commits a material breach of any term or condition of this agreement and the breach remains uncured for thirty (30) calendar days after notice has been provided to the breaching party. WDYLLC may suspend Services contracted to Subscriber (including, but not limited to, any access of authorized users created by Subscriber) at its sole discretion if the Subscriber commits a material breach of any term of condition of this agreement until such time as the breach is cured. A material breach includes, but is not limited to, contesting credit card payments for services, stopping payment on checks used to pay for services, checks being returned for insufficient funds, and Subscriber's past due status for contract fees and other duly authorized additional fees, or any violation of any term of these Universal Terms of Service.
- c) CANCELLATION WITHOUT CAUSE. Should WDYLLC experience the loss of subcontracted services or otherwise,

in its best judgement, find it is unable to satisfactorily perform its obligations under this agreement, WDYLLC may terminate this agreement and refund an appropriate, pro-rated amount of the fees provided by Subscriber. The appropriate level of fees shall be calculated based on WDYLLC price offerings at the time the agreement was signed, pro-rated based on the number of remaining months of service on the contract. Any month where one or more day of service has been provided shall be considered a full month of service.

- d) MODIFICATIONS, AMMDENDMENTS, and WAIVERS. Any changes to the terms of this agreement can occur only with the consent of WDYLLC. WDYLLC may promulgate changes to these terms through Notice to the subscriber. In such instances, Subscriber may terminate services by Notice to WDYLLC received within 168 hours from the date and time of Notice to the Subscriber being provided, or will have accepted the new terms.
- e) SEVERABILITY. If any provision of this agreement is found invalid or unenforceable pursuant to a decree or decision of competent jurisdiction, the remainder of this agreement shall remain valid and enforceable to its terms.
- f) SURVIVAL. Sections 1, 5, 6, and 7 of this Agreement shall survive termination of this agreement.
- g) SURVIVORSHIP. Should Subscriber become deceased or incapacitated during the term of this contract, it is the policy of WDYLLC that information stored within the Subscriber's account and the subscriber's account itself **will not** be made available to successors, heirs, guardians, or even individuals holding duly authorized power of attorney on behalf of Subscriber. However, if WDYLLC receives and has on file (prior to the date of incapacitation or death) a written authorization received as a legal notice to share account information with specific individuals in the event of Subscriber's death or incapacitation, WDYLLC will exercise its best judgement to attempt to meet the Subscriber's expressed wishes in accordance with the authorization it has received.
- h) ASSIGNMENT. This agreement shall be binding upon and inure to the benefit of WDYLLC and the Subscriber and their successors and permitted assigns. WDYLLC may assign this Agreement in the event of a merger, acquisition, sale of substantially all of the assets of a party, or accounts receivable or similar financing(s) with notification to the Subscriber. The Subscriber may not assign or transfer this Agreement without the prior written consent of WDYLLC, which consent shall not be reasonably withheld for business entities undergoing acquisition, merger, or other similar transaction.
- i) NOTICES TO SUBSCRIBER. Any notices to the subscriber that are required to be provided by this agreement may be sent via U.S. mail, electronic mail, or (where noted in the agreement) telephone and/or voice mail. Facsimile copies shall be acceptable as originals. Time-sensitive notices provided by WDYLLC shall have their notification periods calculated from the timestamp provided at WDYLLC for when the message was transmitted.
- j) NOTICES TO WDYLLC. Unless waived by a notice to the subscriber, any notices required from the subscriber to WDYLLC must be sent via registered U.S. mail to: WDY Enterprises, LLC, ATTN: William Yang, P.O. Box 202, Worthington, Ohio 43085.
- k) ENTIRE AGREEMENT. These terms and conditions constitute the entire agreement between WDYLLC and the Subscriber with respect to its subject matter. The terms described in this agreement overrides all previous representations, understandings, or agreements and shall prevail notwithstanding any variance with terms and conditions of any order submitted.
- l) GOVERNING LAW AND FORUM. This agreement shall be governed and construed in accordance with the laws of the State of Ohio. Any action relating to this Agreement shall be brought in a court of competent jurisdiction covering Franklin County, Ohio.
- m) DIGITAL SIGNATURE AND AFFIRMATION. Under Section 1306 of the Ohio Revised Code, electronic communications can and will be used as having valid and binding legal signatures in relation to this contract except as otherwise required. However, WDYLLC reserves the right to reject any digital mark in electronic communications if the circumstances of the communication leave substantial doubt as whether the use of a digital signature is appropriate. WDYLLC shall be the sole arbiter of appropriate use of digital signatures in relation to this contract.
- n) RENEWAL AFFIRMATION SIGNATURES BY PAYMENT. For renewal agreements, the acceptance of payment for services shall be construed as the Subscriber's valid and binding agreement to the Universal Terms of Service.