

TERMS OF SERVICE

THESE TERMS AND CONDITIONS (THE "TERMS") GOVERN THE RELATIONSHIP BETWEEN THE CLIENT IDENTIFIED IN THE ORDER ("YOU"), AND DAXTECH ("DAXTECH").

1.0 Preamble

- 1.1 These Terms form a binding contract between Daxtech and you with respect to the services (the "Services") described in section 2.0 or otherwise provided by Daxtech according to an order for services which both you and Daxtech have approved and signed (the "Order").
- 1.2 These Terms govern, and are incorporated by reference, in every Order. In the event of a dispute between the Order and these Terms, the Order will prevail.

2.0 Services

- 2.1 Daxtech agrees to provide you with those Services described in an Order.

3.0 Term

- 3.1 The Order and the Terms (together, the "Agreement") will take effect on the date specified in the Order, and will continue on a month to month basis, unless otherwise provided in the Order.
- 3.2 Unless otherwise provided in the Order, or unless either you or Daxtech terminate this Agreement according to section 9.0, the Agreement will renew for successive periods of one month each, on the same terms and conditions set out in the Agreement, except with respect to Fees, which you will be required to pay at the prevailing rate charged by Daxtech on the first day of each such renewal period.

4.0 Fees

- 4.1 For the Services provided, from time to time, you agree to pay Daxtech:

- (a) those fees described in an Order, or such other fees as Daxtech may charge, from time to time;
- (b) all charges levied by Daxtech for any services or work completed by Daxtech which fall outside the scope of the Services described in an Order, which charges will be disclosed to you and which you must approve, in writing,

(collectively, the "Fees").

- 4.2 Daxtech will issue invoices for Fees on a monthly basis. You agree that Daxtech may send invoices to you at the electronic mail address shown on the Order, or to such other electronic mail address that you may provide to Daxtech, from time to time. You agree to pay the amount shown on each invoice within fifteen (15) days. Fees which are not paid, when due, will accrue interest at the rate of twenty-four (24.0%) percent per year, compounded monthly (before and after suspension or deletion according to section 4.04).

- 4.3 You agree to pay to Daxtech all sales and other value added taxes chargeable on the Fees.

- 4.4 You agree that Daxtech may:

- (a) suspend the Services, without notice to you, if any amount payable by you is not paid when due;
- (b) cease to provide the Services and delete your account, if any amount payable by you remains outstanding more than twenty (20) business days following suspension;
- (c) take those steps it considers reasonably necessary to collect any amount payable by you.

You agree that any amount which you are liable to pay to Daxtech will remain due and owing even if the Services are suspended, or your account is deleted. You acknowledge that a deleted account will be unrecoverable.

5.0 Acceptable Use

- 5.1 You agree to abide by the Acceptable Use Policy, a copy of which is attached to these terms as Schedule A.

- 5.2 You agree to indemnify Daxtech against any Claims relating directly or indirectly to your violation of the Acceptable Use Policy.
- 5.3 You agree that Daxtech may modify the Acceptable Use Policy at any time, and from time to time. Amendments to the Acceptable Use Policy will take effect immediately following publication on the Daxtech Hosting Website.
- 5.4 If you do not agree with any modifications made to the Acceptable Use Policy, you have the right to end the Hosting Agreement on two months' written notice to Daxtech. If you do not end the Hosting Agreement, you will be deemed to have accepted and to have agreed to abide by the Acceptable Use Policy, as modified.

6.0 Service Interruptions

- 6.1 Provided that you are not in default of this Agreement, Daxtech will guarantee the availability of the Server and the Services for 99.9% of the time in a given month, excluding:
 - (a) a service interruption described in section 6.2;
 - (b) a compromised server or network attack, described in section 6.3;
 - (c) circumstances beyond the reasonable control of Daxtech, including third party network outages, war, fire, flood, sabotage, labor disturbance, acts of government, and acts of god;
 - (d) any downtime resulting from your violation of this Agreement, the Acceptable Use Policy, or any law applicable to you or to Daxtech.

- 6.2 You agree that:

- (a) Daxtech may temporarily suspend services, without penalty or liability to you, for a period of not less than four hours, in order to maintain the Server, or any other facilities necessary to provide the Services, it being understood that excepting emergencies, Daxtech will use commercially reasonable efforts to give you two days' notice of any such suspension and to ensure that any such suspension of services will occur after 9:00PM and before 3:00 A.M.
- (b) Daxtech may temporarily suspend services, without penalty or liability to you, where Daxtech considers it necessary to prevent improper or unlawful use of the Server or any Services.
- (c) Daxtech may refuse to provide, and may otherwise suspend provision of the Services if you or any one of your employees, agents, or contractors engages in behavior which in the opinion of Daxtech is abusive, belligerent, or excessive.

You agree that Daxtech will not be responsible for any loss of data or downtime resulting from willful, accidental or mistaken disconnection or cancellation of an account.

- 6.3 You agree that Daxtech may take any and all steps necessary to prevent the Server or any Services from being accessed, used, modified, or compromised by an unauthorized third party. Without limitation, Daxtech may monitor the Server, disconnect the Server from any local area or wide area network, duplicate or "ghost" the Server, in order to preserve data or otherwise preserve evidence that the Server has been accessed.

7.0 Further Agreements

- 7.1 **Confidentiality - Generally.** From time to time, one party (the "Disclosing Party") may disclose to the other (the "Other") information relating to the Disclosing Party's business or customers, affiliates, subsidiaries, agents, or employees including, without limitation, business and marketing plans, strategies and methods which may not be standard industry practice or which are not generally known in the industry, studies, charts, plans, or compilations of business and industrial information acquired or prepared by or on behalf of the Disclosing Party (all collectively referred to as the "Confidential Information"). Except as authorized by the Disclosing Party, in writing, the Other agrees:

- (a) to use the Confidential Information only for the purposes expressly contemplated in these Terms;
- (b) that no Confidential Information will be copied, reproduced, published, disseminated, or otherwise disclosed to any person, including any affiliate, subsidiary, agent, or employee of the Other, without the Disclosing Party's prior written consent, which may be unreasonably and arbitrarily withheld.

On termination of this Agreement, howsoever caused, and otherwise on demand, the Other agrees to promptly return the Confidential Information to the Disclosing Party, uncopied and undistributed.

- 7.2 **Press.** Daxtech may publish a press release or similar statement regarding the contractual relationship with you, at any time following acceptance of Terms. For that purpose, and in any marketing or promotional materials, Daxtech may publish your name and logo.

- 7.3 **Intellectual Property.** You do not have, and you will not claim any right, title or interest in any services provided by Daxtech or any underlying technology, software, applications, data, methods of doing business or any elements thereof, or any content provided by or on behalf of Daxtech. In addition, you acknowledge that all information, data and reports received from Daxtech are proprietary to and owned by Daxtech. If instructed to do so by Daxtech, you will immediately destroy and discontinue the use of any such reports or data, and any other material owned by Daxtech. You agree not to display or otherwise use any trade mark, trade name, logo, symbols, coined word or combination of words used by Daxtech or permit the same to be displayed or otherwise, except as Daxtech expressly approves, in writing.

- 7.4 **Internet Protocol Addresses.** Daxtech will assign an Internet Protocol address to the Server. You have no right to the address, and Daxtech may change or replace your address, as it considers necessary, from time to time.

- 7.5 **Administrative Access.** Daxtech will retain administrative access to the Server and to any data hosted on the Server, for the purposes of maintenance, provision of the Services, and administration of an Order or these Terms.

8.0 Indemnities

- 8.1 **Mutual Indemnity –** Subject to the limitations expressed in these Terms, each party covenants and agrees to indemnify and save the other and any officer, director, employee, parent company, subsidiary or affiliated company harmless from and against any and all claims, actions, proceedings, suits, losses, costs, expenses, or damages (collectively, the "Claims") suffered or incurred by or arising from any breach by the indemnifying party of any of its covenants and obligations under these Terms or in the Order. Each party agrees (i) to notify the other in the event in the event that it becomes aware of a Claim or the possibility of a Claim; (ii) to cooperate with the indemnifying party, at the indemnifying party's expense, in responding to, defending or settling any such Claim; (iii) to keep the indemnified party fully informed of the actions and positions taken by the claimant and taken or proposed to be taken by the indemnifying party, including the decision to defend or not defend the claim or complaint; (iv) that all costs and expenses incurred by the indemnifying party in investigating, resisting, litigating and settling the Claim, including the payment of any award of damages and/or costs to any third party, will be paid by indemnifying party; (v) that no decision or action concerning or governing any final disposition of the Claim will be taken without notice to indemnified party; (vi) that the indemnified party may elect to participate as a party in any litigation involving the Claim to the extent that the court may permit, and any additional expenses generated by such participation will be paid by the indemnified party subject to the possibility of recovery of some or all of the additional expenses from the complainant.

- 8.2 **Limitation of Liability – You accept all risk of any unauthorized or illegal use of the Server by third parties. Daxtech provides no warranties, makes no representations, and accepts no liability for any unauthorized or illegal access or interference with the Server or your data.** Daxtech's liability for any breach of an Order or these Terms is limited to the amount of money invoiced by Daxtech and actually paid by you. In no circumstance will Daxtech be liable to you or to any of your employees, contractors, or customers for any consequential, indirect, special, punitive or incidental damages or lost profits (including without limitation claims for loss of goodwill, use of or reliance on the services provided hereunder, stoppage of other work or impairment of other assets) arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort or otherwise. Without limiting the foregoing, Daxtech will not be liable for any failure or delay resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or material shortage, transportation interruption of any kind, work slowdown, your actions or inaction, your equipment or software, any third party equipment, or

any other condition affecting production or delivery in any manner beyond the control of Daxtech.

- 8.3 **Limitation Period.** You agree not to commence any action, suit or proceeding against Daxtech for any Claim, more than twelve (12) months following the date on which you became or should reasonably have become aware of the existence of the Claim.

9.0 Termination

- 9.1 Notice. Either party may terminate these Terms (and any non-expired Orders issued according to these Terms) on Notice, to the other party, of at least one month (or a longer period, if so provided in the Order), and in the case of a material breach (including non-payment of fees) of these Terms, on Notice, to the other party, of at least forty-eight (48) hours.

- 9.2 (a) Daxtech may terminate these Terms (and any non-expired Orders issued according to these Terms), without Notice, if your account has been deleted according to section 4.04 or otherwise in the event of:

(i) the violation, by you or anyone for whom you are in law responsible, of the intellectual property rights of either Daxtech or any third party;

(ii) the violation of any acceptable use policy or privacy policy enacted by Daxtech, from time to time;

(iii) the violation, by you or anyone for whom you are in law responsible, of any applicable local, provincial, state or federal statute, including, without limitation, an act of dishonesty;

(iv) your publication, using the Server or Services, of any material which is defamatory, obscene, pornographic, deceptive, fraudulent or otherwise illegal;

(v) conduct on your part or anyone for whom you are in law responsible, that is detrimental to the business, financial position, or reputation of Daxtech, its directors or anyone for whom Daxtech is in law responsible;

(vi) conduct on your part or anyone for whom you are in law responsible, that is of such a serious and substantial nature that it would injure the reputation of Daxtech or of the customers, clients, affiliates, agents, or employees of Daxtech; or

(vii) if you become subject to the provisions of the Winding-Up Act (Canada), the Companies' Creditors Arrangement Act (Canada), the Bankruptcy Act (Canada) or any similar legislation applicable in the jurisdiction where you are ordinarily resident.

- (b) You may terminate these Terms (and any non-expired Orders issued according to these Terms), without Notice, in the event of:

(i) the violation by Daxtech or anyone for whom Daxtech is in law responsible of the intellectual property rights of either the Merchant or any third party;

(ii) the violation by Daxtech of any applicable local, provincial, state or federal statute, including, without limitation, an act of dishonesty;

(iii) conduct on the part of Daxtech that is detrimental to the business, financial position, or reputation of the Merchant;

(iv) any act of Daxtech or any agent, authorized representative or creditor of Daxtech which results in Daxtech becoming subject to the provisions of the Winding-Up Act (Canada), the Companies' Creditors Arrangement Act (Canada), the Bankruptcy Act (Canada).

- 9.3 Notwithstanding termination of the contractual relationship between Daxtech and you, you remain liable to pay all monies due and owing to the date of termination, and for that purpose the Merchant covenants and agrees that the obligations arising under sections 4.0 and 7.0 of these Terms will survive termination, however caused.

- 9.4 Within forty-eight hours following termination, however caused,

- (a) each party will promptly return to the other any Confidential Information in its possession or control;

- (b) each party will cease use of any property belonging to the other, including without limitation any and all intellectual property; and
- (c) each party will remove from any web site, publication, brochure or other promotional material any hyperlink, logo, or reference.

10.0 Agency

10.1 No Partnership. You and Daxtech are independent parties. This Agreement must not be construed so as to create a partnership as contemplated at common law or in accordance with any applicable statute.

10.2 No Agency. Neither party has given to the other any right or authority to assume or create any obligation of responsibility, express or implied, on behalf of or in the name of the other, or to bind the other in any manner whatsoever. It is not the intention of either party to undertake a joint venture or to make you, in any sense, an agent or partner of Daxtech.

11.0 General Terms

11.1 Entire Agreement. These Terms and any Orders issued by you and accepted by Daxtech, from time to time, constitutes the entire agreement between you and Daxtech and replaces any previous or contemporaneous representations, negotiations, understandings, and agreements, oral or written.

11.2 Reliance. You have not relied upon, and Daxtech has not made, any representation or warranty which is not expressly set out in these Terms or in an Order.

11.3 Jurisdiction.

- (a) In all respects, these Terms and every Order issued according to these Terms will be interpreted, construed and enforced according to the laws of the Province of British Columbia.
- (b) Disputes with respect to this Agreement or any Services provided under an Order which cannot be resolved directly between the parties will be referred to and finally resolved by a single arbitrator in Victoria, British Columbia (the "Arbitrator") pursuant to the *Arbitration Act*, R.S.B.C. 1996, c. 55, as amended. The decision of the Arbitrator on all issues or matters

submitted to the Arbitrator for resolution will be conclusive, final and binding on all of the parties, and the Arbitrator will determine who will bear the costs of arbitration.

11.4 Assignment. You may not assign any right or obligation arising under these Terms or an Order issued according to these Terms, without the express written consent of Daxtech, not to be unreasonably withheld. Daxtech may assign the Agreement at any time, in part or in whole.

11.5 Waiver. No right or obligation arising under these Terms or an Order issued according to these Terms may be waived, and no breach excused, unless waived or excused by the written acknowledgement of Daxtech.

11.6 Severability. At the option of Daxtech, the remainder of these Terms will continue in full force and effect in the event that any part is declared unenforceable by a court having jurisdiction.

11.7 Amendment. You acknowledge and agree that notwithstanding any contrary provision, Daxtech may modify these Terms at any time (the "**Modifications**"). Daxtech acknowledges and agrees that it will (a) publish any such Modifications on Daxtech's web site together with a statement as to the date upon which such Modifications are to come into force and effect (the "**Effective Date**"); and (b) provide you with Notice of both the Modifications and Effective Date, at least two (2) business days in advance of the Effective Date. In the event that you fail to terminate these terms according to section 9.0 before the Effective Date, you will be deemed to have read and accepted the Modifications, and these Terms will be amended accordingly.

11.8 Notice. Any notice or other communication ("**Notice**") permitted or required in these Terms or in an Order issued according to these Terms must be in writing, and given by personal delivery or transmitted by facsimile or electronic mail to the receiving party's primary place of business. Any such Notice will be deemed to have been received on the date on it was delivered, or on the third (3rd) business day following the date upon which it was sent by facsimile or electronic mail.

11.9 Binding. This Agreement will enure to the benefit of and be binding upon the respective successors, heirs and assigns of both Daxtech, and you.

SCHEDULE 'A'

ILLEGAL, FRAUDULENT, OFFENSIVE, HARMFUL, OR INFRINGING CONTENT OR ACTIVITY

You must not use, or encourage, promote, facilitate or instruct others to use, the Services or the Server, for any purpose, or to transmit, store, display, distribute, or otherwise make available content, that is illegal, fraudulent, offensive, or harmful, or which otherwise infringes on the intellectual property rights of a third party.

Fraudulent activities include, but are not limited to, make-money-fast schemes, ponzi and pyramid schemes, phishing, pharming, the sale of goods or services in a manner that is deceptive, or any other activity which Daxtech, in its sole discretion, considers fraudulent.

Offensive content includes, but is not limited to, content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sexual activity.

Harmful content includes, but is not limited to, content that might damage, interfere with, or impede any other computer, network, or data store, such as viruses, bots, rootkits, or other malware. Harmful activities include, but are not limited to, activities that, in the opinion of Daxtech, may be harmful to Daxtech, or the reputation or business operations of Daxtech, its principals, employees, or agents, or harmful to a third party.

SECURITY AND ABUSE

You must not use, or encourage, promote, facilitate or instruct others to use, the Services or the Server, to violate the security or integrity of, or to interfere with or disrupt the proper operation of, any computing device, system, or network (each, a "Computer").

You must not, directly or indirectly, probe, scan, test the vulnerability of, circumvent any security measures, or otherwise connect to, access, or use any Computer without express permission of the owner of that Computer.

You must not monitor or intercept the transmission of data to or from a Computer without express permission of the owner of that Computer.

You must not alter, forge, or modify any data which would have the effect of masking its origin or route of transmission.

You must not use the Services or the Server for any purpose which Daxtech, in its discretion, considers abusive. Examples of abuse include, but are not limited to denial of service attacks, mail bombing, broadcast attacks, flooding, the operation of open proxies or mail relays, the operation of an open or recursive domain name service, circumventing any use limits imposed by Daxtech, from time to time, with respect to the Services or the Server, the distribution of unsolicited electronic mail, commercial or otherwise, or the violation of any privacy policy imposed, from time to time, by Daxtech.

REPORTING

Daxtech may, but will not be obligated to, investigate any suspected violation of this policy, and remove, disable access to, or modify any content or resource that violates this policy. Daxtech may also

Daxtech reserves the right to report to appropriate law enforcement officials, regulators, or other third parties any suspected violations of, and the personal information of any parties suspected of violating, the law or any third party intellectual property or privacy rights. We also may cooperate with appropriate law enforcement agencies, regulators, or other third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this policy.