

# Paladin Computers

## Terms of Service Agreement

Last Updated on April 26, 2006

### SERVICE AGREEMENT

This Hosting Agreement governs your purchase and use, in any manner, of all website hosting services (the "Services") for you ("Customer") and accepted by Paladin Computers ("Paladin Computers") and describes the terms and conditions that apply to such purchase and use of the Services. You must register and accept the terms of this Agreement in order to use the Services. **BY REGISTERING FOR AND USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN AS WELL AS ALL POLICIES AND GUIDELINES INCORPORATED BY REFERENCE.** Paladin Computers reserves the right to change or modify any of the terms and conditions contained in this Agreement and any policy or guideline incorporated by reference at any time and from time to time in its sole discretion, and to determine whether and when any such changes apply to both existing and future customers. **IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT OR IF YOU DO NOT AGREE TO THE TERMS OF ANY MODIFICATION, DO NOT CONTINUE TO USE THE SERVICES AND IMMEDIATELY NOTIFY Paladin Computers OF YOUR TERMINATION OF THIS AGREEMENT IN THE MANNER DESCRIBED BELOW.**

The parties agree to the following, which shall apply throughout the term of this agreement:

#### 1. DEFINITIONS

- A. "Plans" shall refer to services offered by Paladin Computers, as listed online at <http://www.paladincomputer.net> that details pricing and feature set of any hosting Plan Paladin Computers offers from time-to-time.
- B. "Customer", as mentioned above, shall refer to the end user who is utilizing the web hosting services provided by Paladin Computers.

#### 2. PRICES

All prices for Plans provided by Paladin Computers to its Customers are in U.S. Dollars. Customer must pay for services provided by Paladin Computers in U.S. Dollars. Customer shall be 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.

#### 3. ORDER ACCEPTANCE AND PAYMENT

- A. All orders are subject to acceptance by Paladin Computers. An order will be deemed accepted when written (email) confirmation of the order is sent to the Customer. Paladin Computers may refuse to accept, or delay for any period of time, any order for any reason.
- B. Payment and Terms: Payment shall be made to Paladin Computers in U.S. dollars only. Payments are due upon account activation and future account renewal, and may be made through the use of a valid credit card, personal/business check or money order. Payment for services shall be made monthly if paid via credit card, and quarterly if paid via check or money order. Billing will continue to occur automatically until Customer requests cessation of service. If shortfalls in payment to Paladin Computers of the full invoice amount occur due to bank fees, transfer fees, or the like, Paladin Computers will re-invoice the Customer for the shortfall. Should payment in full of any invoice (aside from the shortfalls mentioned above) not be received by Paladin Computers within thirty (30) days after account activation or renewal, Paladin Computers may

discontinue, withhold or suspend services to the Customer.

C. Cancellations of service must be made in writing via the Customer's Control Center (located at <https://cp.paladincomputer.net/>), and can not be made without the correct login information provided by Paladin Computers (including customer ID and account password). All information stored on the Paladin Computers network that was placed there by the Customer or is a result of the Customer using the services provided by Paladin Computers is deleted after a period of approximately 15 days from the date of cancellation. Therefore, should the Customer require a copy of said information, the Customer should take steps necessary to retrieve that information prior to cancellation of services. Should the Customer fail to retrieve such information, and should the Customer require a copy of said information after the date of cancellation, it is possible that Paladin Computers can provide the information to the Customer for an additional fee (to be determined at the time of request but could include data restoration and custom service fees). However, Paladin Computers does not guarantee that it will be able to provide the information to the Customer after the date of cancellation.

D. Should any Customer attempt a chargeback for services knowingly purchased from Paladin Computers, Paladin Computers shall immediately shut off services for that Customer and will pursue full legal recourse against the Customer to recoup any and all losses. If a chargeback occurs as a result of Customer error, a \$20 fee will be assessed on top of the full chargeback amount. On a second attempt at a chargeback, Paladin Computers shall immediately discontinue services to the Customer and pursue full legal recourse to recoup any and all losses, and future services to the Customer shall be denied.

E. Setup fees (as such fees are defined on each hosting Plan detail page), for any services or Plans, are not refundable, regardless of the length of time the service or Plan is used by the Customer.

F. Should a Customer follow standard procedures (as defined in Section C above) and cancel services with Paladin Computers, they are entitled to a refund equivalent to the length of time that has been paid for, but not used. This refund is calculated based on a daily rate, depending on the Plan that was ordered. "Free Months" are not taken into account when calculating a refund.

G. Billing Cycle: the Billing Cycle for any and all services commence the day following the day the services/Plans were ordered. Paladin Computers can not, for any reason, change the Billing Cycle for a Plan or service.

H. The Customer is responsible for providing Paladin Computers with the proper and correct Billing and Payment Information. In addition, the Customer is responsible for keeping all contact information, especially email addresses, up to date and current. Paladin Computers conducts all communication with customers via email, including support, billing and network administration communication. Therefore, a current and active email address for all pertinent parties is absolutely essential. Any and all fees incurred due to incorrect Billing and/or Payment information are the sole responsibility of the Customer. Customer has access to any and all information on file, and therefore has every opportunity to keep this information current, via the Paladin Computers Control Center (<https://cp.paladincomputer.net/>).

I. Changes to services provided to the Customer must be submitted in writing to the Billing Department and must include the account password. Upgrades are charged a setup fee of the difference between the setup fees of the two Plans (the old Plan and the upgraded Plan), and a prorated fee for the difference in Plan prices. Downgrades do not receive a credit. The Customer must be aware of what will be gained and/or what will be lost in changing Plans. Paladin Computers is not responsible for lost files, data and/or information due to changes in Plans. Sites that have been shut off for 15 days are deleted from our servers. If, after 15 days and a site has been deleted, a Customer desires to reactivate a site, they will need to order a new Plan and will be held responsible for ensuring they have adequate backups/copies of their site. A site that has been deleted from our servers is not recoverable.

J. Paladin Computers is not responsible for the Customer's failure to use the services/Plans offered by Paladin Computers. The Customer has the right to cancel the services/Plans they have purchased at any time. Therefore, non-use of the services/Plans offered DOES NOT constitute a cancellation of said services/Plans. All customers are required to cancel services as described in Section 3(c), above.

K. Additional Fees: Customer agrees that use of the Services hereunder will not exceed any usage limits/allocations set forth under the Shared Plan details. If Customer does exceed any of the specified usage limits/allocations, Paladin Computers may, at its sole discretion, assess Customer with additional charges (where those additional charges are listed under Additional Features on the Shared hosting pages of the Paladin Computers website), suspend the performance of the Service or terminate this Agreement. In the event that Paladin Computers elects to take any corrective action, Customer will not be entitled to a refund of any unused pre-paid fees.

L. If Paladin Computers collects any payment due at law or through an attorney at law or under advice from a collection agency, or if Paladin Computers prevails in any action to which the Customer and Paladin Computers are parties, Customer will pay all costs of collection, arbitration and litigation, including, without limitation, all court costs and Paladin Computers's reasonable attorney and collect agency fees.

#### 4. DOMAIN REGISTRATION

Paladin Computers may acquire an internet domain name on behalf of the Customer as specified in the Customer's request for services. Any costs incurred by Paladin Computers in the process of obtaining or maintaining a domain name for the Customer shall be immediately reimbursed to Paladin Computers upon receipt of invoice for said services and fees. Should the Customer acquire the domain name on their own, without the assistance of Paladin Computers, the Customer is responsible for any and all fees necessary for the acquisition of the domain name.

A. Domain Registration through Paladin Computers: The Customer is responsible for checking on the availability of any domain name associated with any of the services offered by Paladin Computers. The Customer is also responsible for correctly entering any and all domain information (this includes, but is not limited to, the spelling of the domain, proper domain extension, etc.) during the course of ordering any services offered by Paladin Computers. Paladin Computers is not responsible for domain name availability. If a Plan is built by Paladin Computers using an unavailable or incorrect domain name, the Customer will be charged a \$20.00 fee for any resulting corrections made by Paladin Computers. Paladin Computers does not, in any way, alter any domain information when building sites for the Customer. Domain information is entered solely by the Customer, and is, therefore, the sole responsibility of the Customer.

B. Domain Changes: If a Plan is ordered using an incorrect domain name, the Customer will be invoiced for any and all fees incurred by Paladin Computers in the proper registration/correction/completion of the Customer's order. These fees may include, but are not limited to, any administrative costs, domain registration costs and costs incurred in the correction of domain registration information charged by the domain Registrar.

C. Special Provisions for .US Domain Registrations: the Customer shall indemnify and hold harmless Paladin Computers and Enom Corp., and its directors, officers, employees, representatives and agents from and against any and all claims, suits, actions, other proceedings, damages, liabilities, costs and expenses of any kind, including without limitation reasonable legal fees and expenses, arising out of or relating to the Customer's .US domain name registration and use of any .US registered domain name.

The Customer certifies that they meet the following requirements to qualify to register to use a .US domain name:

(i) The Customer is a natural person (a) who is a United States citizen, (b) who is a permanent resident of the United States of America or any of its possessions or territories, or (c) whose primary place of domicile is in the United States of America or any of its possessions, or;

(ii) An entity or organization that is (a) incorporated within one of the fifty (50) states within the United States or America, the District of Columbia or any of the United States possessions or territories or (b) organized or otherwise constituted under the laws of a state of the United States of America, the District of Columbia or any of its possessions (including a federal, state or local government of the United States or a political subdivision thereof and non-commercial organizations based in the United States), or;

(iii) A foreign entity or organization that has a bona fide presence in the United States of America or any of its

possessions or territories that also (a) regularly engages in lawful activities (sales of goods or services or other business, commercial or non-commercial including not-for-profit activities) in the United States of America, or (b) maintains an office or other property within the United States.

(iv) The name servers listed for all .US domain names must be based within the United States of America or any of its possessions or territories.

The Customer further certifies that both Paladin Computers and Enom, Inc. have requested specific information regarding how the Customer meets the requirements listed above and that the Customer has willingly volunteered such information. The Customer understands and agrees that such information will be verified and will be shared with the .US Registry. The customer further understands and agrees that if such information cannot be verified, or if the Customer fails to abide by the requirements listed above, the registered domain name shall be subject to immediate cancellation.

D. Private domain registrations: customer agrees to abide by all Terms and Conditions as outlined by Enom, Inc (“Enom”), the domain name provider that has partnered with Paladin Computers to provide both public and private domain registrations. These Terms and Conditions include, but are by no means limited to, the replacement of contact information with that of Enom or similar corporate entity related to Enom, the providing to Enom current and complete contact information (and the subsequent upkeep of provided contact information) so that, should issues arise in relation to a domain that is privately registered the registrant can receive and reply to communication initiated by Enom, that, just as with domain registrations in general, neither Paladin Computers nor Enom can guarantee or warrant the private registration of a domain, and more. Full Terms and Conditions can be found on the Enom website located at <http://www.enom.com>. In addition, Paladin Computers provides a copy of the Terms and Conditions that is available for download at <http://www.paladincomputer.net/docs/terms-of-service.pdf>. However, Paladin Computers does NOT guarantee that the Terms and Conditions it provides is as current or up-to-date as the one provided on the Enom website as said Terms and Conditions are subject to change.

## 5. LIMITATION OF PALADIN COMPUTERS’S OBLIGATIONS AND LIABILITY

A. Paladin Computers will utilize its best efforts to maintain acceptable performance of services contracted for, but Paladin Computers makes absolutely no warranties whatsoever, express or implied, including warranty of merchantability or fitness for a particular purpose. Paladin Computers cannot guarantee continuous service, service at any particular time, or integrity of data stored or transmitted via its system or via the Internet. Paladin Computers will not be liable for the inadvertent disclosure of, or corruption or erasure of, data transmitted or received or stored on its system. Paladin Computers shall not be liable to Customer for any claims or damages which may be suffered by Customer, including, but not limited to, losses or damages of any and every nature, resulting from the loss of data, inability to access the Internet or inability to transmit or receive information, caused by, or resulting from, delays, non-deliveries or service interruptions whether or not caused by the fault or negligence of Paladin Computers.

B. Paladin Computers may discontinue servicing any Plan or may impose conditions as a prerequisite for continuing to service any Plan. Paladin Computers agrees to provide Customer with reasonable notice via email or fax of any such intent to discontinue or impose conditions unless it is determined that such notice would cause harm to Paladin Computers. The following activities are specifically not allowed by Paladin Computers and will result in IMMEDIATE account termination: running adult web sites, hate web sites or gambling web sites; participation in undirected bulk email delivery (spamming) either through the use of our mail servers or not; or any sites promoting or participating in illegal activities.

C. Paladin Computers's liability to Customer and any end user of any Plan or other Paladin Computers services is limited to the amount paid to and received by Paladin Computers for services. In no event shall Paladin Computers be liable to Customer, any end user or any other entity for any special, consequential or other damages however caused, whether for breach of contract, negligence or otherwise, even if Paladin Computers has been advised of the possibility of such damage.

D. Customer shall defend, indemnify and hold Paladin Computers, its officers, directors, shareholders, agents, employees,

successors and assigns harmless from and against any and all claims, demands, actions, liability, costs, damages or expenses, including reasonable attorney's fees and other legal costs, arising from any lawsuit, claim, proceeding, settlement or other action which may be brought or maintained by virtue of or in connection with this Agreement or the providing of the services outlined in this Agreement; provided, however, that this obligation shall apply only to the extent that the party seeking indemnification shall not be at fault or found liable with respect to or in connection with the lawsuit, claim, proceeding, settlement or other action in which such party is seeking indemnification under this Agreement.

Customer further agrees to indemnify Paladin Computers against any losses which arise out of, or relate to the domain names used and/or any content stored on the Paladin Computers network that is provided by the Customer and/or their agents, employees or assigns, and Customer agrees to reimburse Paladin Computers for any and all legal expenses, including reasonable attorneys' fees and other legal costs, incurred by Paladin Computers in connection with any such losses.

E. While Paladin Computers provides backup services (with the exception of IIS .log files) and makes every effort to provide previous copies of customer files (for a specified dollar amount as specified on the Paladin Computers web site), to its customers, it is not guaranteed that these copies will be available as there are unknown issues that may arise preventing complete or acceptable restorations.

F. Restoration of data from the backups Paladin Computers provides are done during normal business hours and based on the average ticket time for all Support requests. Restore requests are handled via the Control Center Paladin Computers makes available for use by all Shared Hosting customers. During off hours, every attempt is made to restore data as quickly as possible. However, off hours are used to run the backups of all server data on the Paladin Computers network. Therefore, while Paladin Computers is backing up server data, the ability to restore data at the same time that backups are running is limited and will generally take considerably longer than requests made during normal business hours.

G. Paladin Computers has a third party run security and vulnerability audits of their network. These audits include, but are not limited to, port scans, server configuration audits and other security and vulnerability checks that help ensure that the network Paladin Computers manages is as secure as possible. At times, current or potential Paladin Computers customers request to have their own audits run on the Paladin Computers network. Paladin Computers prohibits third parties from running any type of security audit or check of the Paladin Computers network, apart from those audits or checks that are initiated by Paladin Computers or that have prior written approval from Paladin Computers. Unauthorized scans or checks of the Paladin Computers network will be treated as an attack against the Paladin Computers network and will be dealt with accordingly, including, but not limited to, immediate account termination and/or any legal recourse available.

H. Paladin Computers may, at its sole discretion, limit or deny access to its servers, including the blocking of certain ports and/or the denial of certain services, if, in the judgment of Paladin Computers, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network, the software or the data stored on the Paladin Computers servers.

## 6. PROPERTY RIGHTS

Paladin Computers owns all rights, titles and interests in Paladin Computers's trade names, service marks, inventions, copyrights, trade secrets, patents and know-how relating to the design, function or operation of Plans and of the hardware and software systems and resources necessary to provide the individual service elements of which they consist. This agreement does not constitute a license to Customer to use Paladin Computers's trade names or service marks. The use by Customer of the other property rights mentioned in this Agreement is authorized only for the purposes of marketing and selling Plans.

## 7. CONFIDENTIALITY

A. The parties acknowledge that each may disclose certain oral or written information in performing their respective obligations under this Agreement, which may be deemed to be the confidential and proprietary information of such party.

As used in this Section 7, the term "Confidential Information" includes any and all of the following information of Paladin Computers and Customer that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically or otherwise, or otherwise made available by observation, inspection or otherwise by either party or its representatives (collectively, a "Disclosing Party") to the other party or its representatives (collectively, a "Receiving Party"):

1. All information that is a trade secret under applicable trade secret or other law;
2. All information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures and architectures;
3. All information concerning the business and affairs of the Disclosing Party (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; and
4. Notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing.

Any trade secrets of a Disclosing Party shall also be entitled to all of the protections and benefits under applicable trade secret law and any other applicable law. If any information that a Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Section 7, such information shall still be considered Confidential Information of that Disclosing Party for purposes of this Section 4 to the extent included within the definition. In the case of trade secrets, each of Licensor and Licensee hereby waives any requirement that the other party submit proof of the economic value of any trade secret or post a bond or other security.

**B. Confidentiality and Nondisclosure.** The parties agree that they will: (a) hold in confidence and refrain from disclosing to any other person all Confidential Information, whether written or oral, tangible or intangible, (b) take all reasonable precautions necessary to ensure that the Confidential Information is not shown, copied or disclosed to third parties, without the prior written consent of the Disclosing Party, (c) not, without the prior written consent of the Disclosing Party, release, disclose or permit the release or disclosure by its agents or representatives of any Confidential Information to anyone, or otherwise use or permit its agents or representatives to use, such Confidential Information for any purpose at any time, except to the extent permitted herein or as may be ordered by a court of competent jurisdiction, and (d) observe all written security policies implemented by the Disclosing Party from time to time with respect to the Confidential Information. The parties agree to use the same degree of care as used for their own information of like importance, and in any event to use reasonable care, in safeguarding against disclosure of the Confidential Information. If either party is ordered to disclose any Confidential Information, whether in a legal or regulatory proceeding, such party shall provide the disclosing party with prompt notice of such request or order so that the Disclosing Party may seek to prevent such disclosure. In the event of any disclosure, the party so disclosing shall disclose only that portion of the Confidential Information that it is ordered to disclose pursuant to such legal or regulatory proceeding.

**C. Exceptions.** Sections A and B do not apply to that part of the Confidential Information of a Disclosing Party that a Receiving Party demonstrates (a) was, is or becomes generally available to the public other than as a result of a breach of this Section 4 by the Receiving Party or its representatives; (b) was or is developed by the Receiving Party independently of and without reference to any Confidential Information of the Disclosing Party; or (c) was, is or becomes available to the Receiving Party on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

5. Paladin Computers will routinely scan Customer websites for malicious code and viruses and delete any if found.

6. Customer agrees to not to attempt to obtain other Customer data, or information about the Paladin Computers servers, such as passwords, data files, etc. Any such attempts will be cause for immediate termination of Customer account with no refund. Paladin Computers may seek legal recourse.

## 8. CUSTOMER WEBSITE AND WARRANTIES

The Customer shall be solely responsible (where applicable) for the development, operation, maintenance and ownership of Customer's website, online store and ecommerce activities including, without limitation (i) the accuracy and appropriateness of the content and material appearing on their website, (ii) ensuring that the content and materials appearing on their website do not violate or infringe upon the rights of any person, company, organization or any other entity and (iii) ensuring that the content and materials appearing on their website are not defamatory or otherwise illegal. If the Customer operates an online store, sells or provides products and/or services, then the Customer shall be solely responsible for accepting, processing and filling their own customer orders and for handling their own customer inquiries or complaints. Customer shall be solely responsible for the payment or satisfaction of any and all taxes associated with its website and online store.

Customer shall be responsible for the security and confidentiality of any customer information (including, without limitation, customer credit card numbers) that Customer may receive as a result of its website or online store.

Customer represents and warrants that Customer owns or has the right to use the content and material contained on their website, including all text, graphics, sound, music, video, programming, scripts and applets, and the use, reproduction, distribution and transmission of the content and any information and materials contained therein does not, and will not, (i) infringe or misappropriate any copyright, patent, trademark, trade secret or any other proprietary right of a third party, (ii) violate any criminal laws or (iii) constitute false advertising, unfair competition, defamation, an invasion of privacy, violate a right of publicity or violate any other law or regulation. In addition, the Customer grants Paladin Computers the right to reproduce, copy, use and distribute all and any portion of the Customer content to the extent needed to provide and operate the services Paladin Computers provides.

## 9. COPYRIGHT DISPUTE POLICY

Paladin Computers reserves the right to remove any and all materials on a website hosted by Paladin Computers which infringe on copyrighted work, in accordance with the Digital Millennium Copyright Act. Should any dispute arise in regards to an alleged copyright infringement on a website hosted by Paladin Computers, the following procedures must be followed.

The third party, who henceforth shall be referred to as "Complainant," must submit written communication (by fax or regular mail, email only through prior arrangement) to Paladin Computers's designated agent which substantially includes the following:

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at the Customer's site.

(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Paladin Computers to locate the material. For example, should a particular page contain material that is allegedly infringing a copyrighted work, Complainant will need to provide the Paladin Computers Agent with a link to that page and a description of the alleged infringing material as follows:

On <http://www.some-domain.com>, there are several uses of a logo belonging to Company X, and the owner of some-

domain.com does not have the permission of Company X to use said logos.

(iv) Information reasonably sufficient to permit Paladin Computers to contact the Complainant, such as an address, telephone number, and, if available, an email address.

(v) A statement that the Complainant has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the Complainant is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Paladin Computers's Agent for claims of copyright infringement can be contacted at:

Paladin Computers  
ATTN: Copyright Agent  
14781 Memorial Drive  
Suite #818  
Houston, TX 77079  
support@paladincomputer.net

Upon receipt of written notification containing the above information from the Complainant, and only upon receiving such notice, Paladin Computers will:

- (i) Remove or disable access to the infringing material(s) immediately or within a reasonable time frame.
- (ii) Take reasonable steps to contact the Customer that the material(s) in question has been removed or disabled.

In response, the Customer may send a written counter notification (by fax or regular mail, email only through prior arrangement) to Paladin Computers's designated agent. The counter notification must include the following:

- (i) A physical or electronic signature of the Customer.
- (ii) Identification of the material(s) that have been removed or to which access has been disabled and the location at which the material(s) appeared before it was removed or access to it was disabled.
- (iii) A statement, under penalty of perjury, that said Customer has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
- (iv) The Customer's name, address and telephone number, and a statement that the Customer consents to the jurisdiction of Federal District Court in which this address is located. If the Customer's address is outside of the United States, the Customer consents to the judicial district of Paladin Computers's principal place of business, and the Customer will accept service of process from the Complainant who provided the original notification or an agent of such person.

Upon receipt of the written counter notification containing the above information from the Customer, and only upon receiving such notice, Paladin Computers will:

- (i) Provide the Complainant with a copy of the counter notification from the Customer.
- (ii) Inform the Complainant that Paladin Computers will replace the removed material or cease disabling access to it in 10 business days.
- (iii) Replace the removed material and cease disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless Paladin Computers's designated agent receives notice from Complainant that an action has been filed, seeking a court order to restrain the Customer from engaging in infringing activity relating to

the material referenced in the original notification.

## 10. RELATIONSHIP OF THE PARTIES

The parties are independent contractors bound by the provisions hereof. Paladin Computers is under the control of Customer only as to the result of the services to be provided by Paladin Computers and not as to the means by which such result is accomplished. This Agreement shall not be construed to create any kind of agency, franchise, employment, partnership, joint venture or other form of joint enterprise, it being understood that Paladin Computers shall conduct its business at its own risk and expense and for its own account, in the status of an independent contractor and completely independent entity. Except as expressly provided herein, Customer shall have and exercise no right or control or direction over the conduct, management, operation, form or affairs of Paladin Computers's business. Paladin Computers and Customer shall each be responsible for paying for themselves all federal and state income taxes, FICA (social security) taxes or any other applicable taxes and shall be responsible to maintain all applicable licenses, workers' compensation and all other coverages required by law for Paladin Computers and Customer.

## 11. APPLICABLE LAW, JURISDICTIONAL MATTERS

This agreement takes effect when accepted by Paladin Computers in Texas. It is to be governed by and construed under the laws of the State of Texas and the United States of America. The federal and state courts of the State of Texas shall have exclusive jurisdiction to adjudicate any non-arbitrable dispute arising out of this agreement. Customer hereby expressly consents to (1) the jurisdiction of the courts of Texas and (2) service of process in accordance with Texas State law. To the extent permissible by the law of Customer's jurisdiction, Customer waives any requirement that service of process or of any documents be made upon it pursuant to the provisions of the Hague Convention.

## 12. ENTIRE AGREEMENT; MODIFICATIONS

This agreement sets forth the entire agreement and understanding between the parties and merges all prior discussion between them. Paladin Computers may make changes to this agreement. However, no significant changes (the significance to be determined by Paladin Computers) can be made without thirty (30) days' written notice provided to Customer, advising of the change and the effective date thereof. Utilization of Paladin Computers services by Customer and/or its Customers following the effective date of such change shall constitute acceptance by Customer of such change(s).

## 13. ASSIGNMENT

You may not assign this Agreement or any right or obligation hereunder, by operation of law or otherwise, without Paladin Computers's prior written consent. Paladin Computers may assign its rights and obligations under this Agreement, and may utilize affiliate and/or agents in performing its duties and exercising its rights hereunder, 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 assigns.

## 14. ENFORCEMENT

A. Investigation of Violations. Paladin Computers may investigate any reported 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, customers and/or third parties. Paladin Computers reserves the right to access or review the contents of any email or similar stored electronic communications as required or permitted by applicable law or legal process.

B. Disclosure Rights. To comply with applicable laws and lawful governmental requests, to protect Paladin Computers's

systems and customers, or to ensure the integrity and operation of Paladin Computers's business and systems, Paladin Computers may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e., name, email address, etc.), IP addressing and traffic information, usage history and content residing on Paladin Computers's servers and systems. Paladin Computers may also access and disclose any Customer information to an authorized third party, including an attorney at law or collection agency, when Paladin Computers must bring legal action against a Customer who fails to pay when due pursuant to this Agreement.

#### 15. 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 hereof and thereof.

#### 16. ACCEPTANCE OF TERMS

**BY REGISTERING FOR AND USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN AS WELL AS ALL POLICIES AND GUIDELINES INCORPORATED.**