

## Website Hosting Agreement

This Hosting Contract governs your purchase and use, in any manner, of all Web site hosting services, including the Shared Hosting Services, (collectively, the "Services") as described in our hosting package, and further describes the terms and conditions that apply to such purchase and use of the Services. For the purposes of this Contract, the Hosting Services include the hosting of website(s) as well as the hosting of Sharepoint services. You must register and accept the terms of this Contract in order to use the Services. BY PURCHASING THESE SERVICES AND USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS CONTRACT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN AS WELL AS ALL POLICIES AND GUIDELINES INCORPORATED BY REFERENCE. Burgess Computer reserves the right to change or modify any of the terms and conditions contained in this Contract and any policy or guideline incorporated by reference at any time and from time to time at its sole discretion, and to determine whether and when any such changes apply to both existing and future customers. Any changes or modification will be effective upon receipt of the revisions by the customer. Your continued use of the Services following your receipt of any changes or modifications will constitute your acceptance of such changes or modifications. IF YOU DO NOT AGREE TO THE TERMS OF THIS CONTRACT, DO NOT PURCHASE THESE SERVICES. IF YOU DO NOT AGREE TO THE TERMS OF ANY MODIFICATION, DO NOT CONTINUE TO USE THE SERVICES AND IMMEDIATELY NOTIFY BURGESS COMPUTER OF YOUR TERMINATION OF THIS CONTRACT.

### Use of Services

**1.1 Applicable Policies.** The Burgess Computer Acceptable Use Policy, Rackspace Acceptable Use Policy and Microsoft license terms govern the general policies and procedures for use of the Services. The Burgess Computer Acceptable Use Policy is posted on Burgess Computer's Web site at <http://www.burgesscomputer.com/wordpress/wp-content/uploads/2012/01/Acceptable-Use-Policy.pdf> and may be updated from time-to-time. The Rackspace Acceptable Use Policy can be found at <http://www.rackspace.com/information/legal/aup/php>, and may be updated from time-to-time. The Microsoft license terms can be found at <http://www.rackspace.com/aboutus/legal/microsoftlicense.php>, and may be updated from time-to-time. YOU SHOULD CAREFULLY READ THE ACCEPTABLE USE POLICIES AND LICENSE TERMS. BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THE ACCEPTABLE USE POLICIES AND LICENSE, AND ANY MODIFICATIONS THERETO. BURGESS COMPUTER RESERVES THE RIGHT TO TERMINATE YOUR ACCOUNT FOR ANY VIOLATION OF THE ACCEPTABLE USE POLICIES, LICENSE TERMS OR THIS CONTRACT. TERMINATION FEES WILL APPLY FOR VIOLATIONS OF ACCEPTABLE USE POLICIES OR LICENSE TERMS. PLEASE REFER TO THE ACCEPTABLE USE POLICIES AND/OR LICENSE TERMS FOR MORE SPECIFIC INFORMATION.

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

**1.3 Bandwidth and Storage Usage.** You agree that use of the Services hereunder will not exceed the bandwidth and web site and email storage usage limits set out in the hosting offering. If you use any

bandwidth or storage space in excess of the agreed upon number of megabytes per month, Burgess Computer may, in its sole discretion, assess additional charges, suspend the performance of the Service, or terminate this Contract. In the event that Burgess Computer elects to take any corrective action, you will not be entitled to a refund of any unused pre-paid fees. You understand that the included mailbox(s) is not intended to be used for the sending of bulk or large group emails.

**1.4 Server Resources.** Burgess Computer prohibits any Subscriber Content or activities that use excessive server resources, or may adversely affect any other Customers. Customer understands that they share server resources with other Customers. In order to provide a stable and reliable hosting environment, server resources are limited for each account, which may include CPU and memory usage, number of concurrent processes, number of concurrent port or database connections, total bandwidth usage and disk space allocation.

**1.5 Domain Names.** As part of the Services, you will provide Burgess Computer with a registered domain name or names or Burgess Computer will register such domain name(s) selected by you, provided that such domain name is available for registration and does not violate any registration services' policies, or any law or regulation. You agree to promptly reimburse Burgess Computer for any fees paid by Burgess Computer to a domain registrar with respect to the registration and maintenance of such domain name(s). In the event of any dispute or cause of action arising out of or related to your domain name used in connection with the Services, upon your request Burgess Computer will attempt to register an alternative domain name chosen by you. You agree to be bound by the terms of InterNIC's then current domain name policy and/or the policies of the national DNS registration authorities to which you become subject upon registration of your domain name. The inability to use a domain name shall not entitle you to a refund by Burgess Computer of any fees paid with respect to the registration of such unusable domain name.

**1.6 Mass Emailing.** Unless otherwise specified in writing, Burgess Computer does not allow the use of their services for mass mailings. This includes all mailing lists, legitimate opt-in or not. Bulk Email Policy restricts customers from sending any email of similar content to more than 250 recipients—even if the email is sent in batches over time or is sent using multiple email accounts. For these types of mass mailings, a third party mass email service should be used.

**1.6 No High Risk Use.** You may not use Burgess Hosting Services in any situation where failure or fault of the hosting services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, you may not use, or permit any other person to use, Burgess Hosting Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or medical life support devices.

## **2. Customer Responsibilities**

- Customer will cooperate fully with Burgess Computer in connection with Burgess Computer performance of Services.
- Customer will provide Burgess Computer with their most current and accurate contact information, including but not limited to mailing address, telephone, and email address.
- Customer is solely responsible for providing its users with any required disclosures on their website.
- Customer is solely responsible for making back-up copies of Subscriber Content.
- In the event of a domain transfer, customer is solely responsible for contacting and working with their domain registrar to transfer their domain to Burgess Computer, unless the customer has contracted with Burgess Computer to provide assistance with the transfer. Burgess Computer will provide any relevant DNS information required for domain transfers.

- Customers who registered new domain names through Burgess Computer and, under circumstances wherein Customer agrees for Burgess Computer to disable Domain Name auto-renewal, the customer is solely responsible for proactively taking action to renew their domain name.
- Payment Terms: Burgess Computer offers the option of monthly, quarterly or yearly billing for Website Hosting. At the time of initiation or renewal of service, the Customer will receive an invoice, payment of which is due net 30 days. Any payments not received on time may result in the Customer being declared in default of this Agreement, at the discretion of Burgess Computer. Late payments will be subject to an eighteen-percent (18%) per annum interest charge and Website Hosting may be terminated.
- Declined Credit Card Payments or Checks Returned for Insufficient Funds: Burgess Computer will charge \$25.00 each time a check is returned for insufficient funds or a credit card payment is declined.
- Secure Passwords. The account holder agrees to maintain a secure password to the account. Secure passwords are those that are between 6 and 8 characters long, contain upper and lower case letters, and numbers or other characters, and cannot be found in direct or reverse order in a dictionary, without regard to the language of the dictionary.

### **3. Intellectual Property Rights**

**3.1 Your License Grant to Burgess Computer** You hereby grant to Burgess Computer a non-exclusive, worldwide, and royalty-free license for the Initial Term and the Renewal Term, if applicable, to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use your content as necessary for the purposes of rendering and operating the Services to you under this Contract. You expressly (a) grant to Burgess Computer a license to cache materials distributed or made available for distribution via the Services, including content supplied by third parties, and (b) agree that such caching is not an infringement of any of your intellectual property rights or any third party's intellectual property rights.

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

**3.3 Burgess Computer Materials and Intellectual Property.** Burgess Computer shall also maintain and control ownership of all Internet protocol ("IP") numbers and addresses that may be assigned to you by Burgess Computer. Burgess Computer reserves, in its sole discretion, the right to change or remove any and all such IP numbers and addresses.

### **4. Disclaimed Warranties**

You acknowledge and agree that Burgess Computer exercises no control over, and accepts no responsibility for, the content of the information passing through Burgess Computer's host computers, network hubs and points of presence, or the Internet. ALL SERVICES PERFORMED HEREUNDER ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING, WITHOUT LIMITATION, ANY FAILURE DUE TO COMPUTER HARDWARE OR



6 oak grove avenue  
bath, maine 04530  
www.burgesscomputer.com  
800.498.8642 or 207.443.9554

COMMUNICATION SYSTEMS. EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, BURGESS COMPUTER DOES NOT MAKE AND HEREBY DISCLAIMS, AND YOU HEREBY WAIVE ALL RELIANCE ON, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

## 5. Limitation and Exclusion of Liability

**5.1 Limitations.** IN NO EVENT SHALL BURGESS COMPUTER OR ITS SUPPLIERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. NEITHER BURGESS COMPUTER NOR ITS SUPPLIERS SHALL HAVE LIABILITY WITH RESPECT TO BURGESS COMPUTER'S OBLIGATIONS UNDER THIS CONTRACT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF BURGESS COMPUTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE FOREGOING LIMITATION OR EXCLUSIONS MAY NOT APPLY TO YOU. IN ANY EVENT, THE LIABILITY OF BURGESS COMPUTER AND ITS SUPPLIERS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO BURGESS COMPUTER BY YOU UNDER THIS CONTRACT DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY BURGESS COMPUTER HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU HEREBY RELEASE BURGESS COMPUTER AND ITS SUPPLIERS FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIM IN EXCESS OF THE LIMITATION STATED IN THIS SECTION.

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

**5.3 Software Upgrades.** Burgess Computer as needed and at times without notice will need to perform software upgrades, security patches and updates, install bug patches that are made available by our vendors, and other miscellaneous server-related upgrades. Burgess Computer shall not be liable for any malfunction, web site error or any other issue that may arise with your site as a result of these upgrades. Further, it is the responsibility of the customer to keep their web site or application current with all the latest standards and specifications.

**5.4 Backup.** Burgess Computer maintains a backup of the server(s) for the sole purpose of internal systems administration. Burgess Computer advises the Customer that it does not guarantee any storage or backup of Customer's Content. Customer is responsible for providing any storage, backup and archival history support with respect to its Content, whether created by Customer or for Customer by a different party.



6 oak grove avenue  
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**6. Web Hosting Fees, Billing and Terms for** [Click here to enter text.](#):

- a. Burgess Hosting Plan: [Choose an item.](#)
- b. Billing Option: [Choose an item.](#) billing
- c. Terms: The initial term of this agreement is for a one year period that starts at the time the website goes live on Burgess' Web Hosting platform. After the one year initial term, the web hosting agreement will continue on a yearly/monthly basis unless and until either party provides notice of termination of this agreement.

**7. Indemnification**

You hereby release and hold harmless, and agree to indemnify, Burgess Computer and its affiliates and suppliers (and their respective employees, directors and representatives) against any and all claims, actions, proceedings, suits, liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by Burgess Computer or its suppliers, arising out of or relating to (a) your violation or breach of any term, condition, representation or warranty of this Contract or any applicable policy or guideline; (b) your improper or illegal use the Services; or (c) your violation, alleged violation, or misappropriation of any intellectual property right (including, without limitation, trademark, copyright, patent, trade secrets) or non-proprietary right of a third party (including, without limitation, defamation, libel, violation of privacy or publicity).

**Burgess Computer**

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

Name: [Click here to enter text.](#)

Title: [Click here to enter text.](#)

Date: [Click here to enter text.](#)

[Click here to enter text.](#)

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

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

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

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