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## TERMS AND CONDITIONS

On4 Networks  
700-177 Lombard Ave  
Winnipeg, MB R0A 0X0  
Canada



**These TERMS AND CONDITIONS shall apply any agreements and/or legal relationships between On4 Networks Corporation and Customer resulting therefrom or in connection therewith. Any amendments to the TERMS AND CONDITIONS are only legally binding between Parties, if both Parties have expressly agreed to such amendments in writing.**

**On4 Networks Corporation is a company incorporated and registered in Manitoba, Canada (Supplier)**

## General terms

This agreement shall begin on the date the Customer accepted the terms of the agreement and shall continue indefinitely unless terminated in accordance with the terms of this agreements

The Supplier agrees to provide services described in the order for the fees stated in the order

The Customer agrees to pay the agreed price to the Supplier and to provide necessary assistance to the Supplier. The Customer represents and warrants to the Supplier that the information he, she or it has provided and will provide to the Supplier for purposes of establishing and maintaining the service is accurate. If the Customer is an individual, the Customer represents and warrants to the Supplier that he or she is at least 18 years of age.

The specification of the services governed by this agreement is described in the Services Specification based on the description as it stands on the Effective Date. The Supplier may modify products and services from time-to-time. Should the description of services change subsequent to the Effective Date, the Supplier has no obligation to modify services to reflect such a change.

The Customer acknowledges that all intellectual property rights in the service and any modification belong and shall belong to the Supplier, and the Customer shall have no rights in or to the service other than the right to use it in accordance with the terms of this agreement.

The Supplier reserves the right to make changes to these terms at any time. To the extent the Supplier is able, the Supplier will give the Customer advance notice of these changes. If these changes materially affect the Customer's ability to use services, the Customer may terminate this agreement within 30 days of such a change. Otherwise, the Customer's continued use of the service is the Customer's consent to be bound by the changes.

In the case of conflict or ambiguity between any provision contained in the body of this agreement and any provision contained in other documents, the provision in the body of this agreement shall take precedence.

Questions about the terms of this agreement will be answered at e-mail address [legal@on4networks.com](mailto:legal@on4networks.com)

# Payment

The Supplier may require payment before beginning service

The Customer is fully responsible for the accuracy and completeness of all data (such as change in billing or mailing address) and timely notification of changes of these details. The Supplier is not responsible for any misunderstanding resulting from failure to notify of these changes by the Customer.

The Supplier may increase its fees for services, if such a change notifies the customer at least thirty (30) days prior to the effective date of new fees. The Customer is entitled to terminate this Agreement with effect from the fee change. If the Customer does not give a notice of non-renewal, the Customer shall be deemed to have accepted the new fee.

The Customer doesn't have the right to hold back any payment from the Supplier in case of service or availability problems.

The Customer acknowledges that the amount of the fee for the service is based on the Customer's agreement to pay the fee for the entire initial service term, or renewal term, as applicable.

All charges are non-refundable unless expressly stated otherwise, or otherwise provided by applicable law.

If the Customer believes that there is an error in calculation of the fee, the Customer has the right claim settlement prices for the service.

## Supplier's warranties and limits of liability

The Supplier warrants that the service will conform in all material respects to the specification. If the Customer notifies the Supplier in writing of any defect or fault in the service in consequence of which it fails to conform in all material respects to the specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having used the service outside the terms of this agreement, for a purpose or in a context other than the purpose or context for which it was designed, the Supplier shall, at the Supplier's option, do one of the following: a) replace the service; or b) repair the service; or c) terminate this agreement immediately by notice in writing to the Customer and refund any of the fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the service to date of termination), provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault. However if both the replacement and repair appear financially unreasonable to the Supplier, the Supplier shall terminate this agreement immediately.

The Customer agrees that the Supplier shall not be responsible for unauthorized access to or alteration of the Customer's data. The Supplier disclaims any and all warranties regarding services provided by third parties, regardless of whether those services appear to be provided by the Supplier.

The Customer represents and warrants to the Supplier that has the experience and knowledge necessary to use services and will provide the Supplier with material that may be implemented by the Supplier to provide services without extra effort on its part.

The Supplier shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories: a) special damage even though the Supplier was

aware of the circumstances in which such special damage could arise; b) loss of profits; c) loss of business opportunity; d) loss of goodwill; e) loss of data.

The Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability otherwise than pursuant to the express terms of this agreement.

No party shall be liable to the other for any delay or non-performance of its obligations under this agreement arising from any cause beyond its control (force majeure) including, without limitation, any of the following: act of God, governmental act, significant failure of a portion of the power grid, significant failure of the Internet, natural disaster, war, flood, explosion, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry. For the avoidance of doubt, nothing in this clause shall excuse the Customer from any payment obligations under this agreement.

All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## **Termination**

Either party may terminate this agreement at any time on written notice to the other if the other: a) is in material or persistent breach of any of the terms of this agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or b) is unable to pay its debts, or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

Notwithstanding the previous clause, the Supplier may at any time terminate this agreement for any reason by giving written notice to the Customer, whereas the Customer may terminate this agreement by giving 30 days' notice in writing to the Supplier if it wishes to stop using the service.

The Customer agrees that the Supplier may suspend services to the Customer without notice and without liability if: a) the Supplier reasonably believes that the services are being used in violation of the this agreement; b) the Supplier reasonably believes that the suspension of service is necessary to protect its network or its other customers; c) as requested by a law enforcement or regulatory agency; or d) the Customer failures to pay fees due. The Customer shall pay the Supplier's reasonable reinstatement fee if service is reinstated following a suspension of service under this subsection.

On termination for any reason: a) all rights granted to the Customer under this agreement shall cease; b) the Customer shall cease all activities authorised by this agreement; c) the Customer shall immediately pay to the Supplier any sums due to the Supplier under this agreement.

## **Data protection**

The Customer acknowledges that the Supplier processes personal data, as defined under the relevant data protection laws, of the users of the service for the purpose of complying with its obligations under this agreement.

The Customer hereby warrants that it has the consent of the users to disclose their personal data to the Supplier for the purpose of using the service and that for the same purpose the users have agreed that their personal data may be transferred to territories outside the EEA.

The Supplier will take all steps reasonably necessary to ensure that personal data is treated securely.

The Customer agrees that the Supplier may, without notice to the Customer, report to the appropriate authorities any conduct by the Customer or any of the Customer's customers or end users that the Supplier believes violates applicable law, and provide any information that it has about the Customer or any of its customers or end users in response to a formal or informal request from a law enforcement or regulatory agency or in response to a formal request in a civil action that on its face meets the requirements for such a request.

The Supplier shall not disclose any data to third parties, but may process such data in duly anonymised and aggregated form for purposes such as internal statistics, commercial sale and promotion.

Each party shall, during the term of this agreement and thereafter, keep confidential all, and shall not use for its own purposes (unless in accordance with aforementioned clause) nor without the prior written consent of the other disclose to any third party, any information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party, unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party. The provisions of this clause shall remain in full force and effect for 1 year after the termination of this agreement for any reason.

## **Indemnification**

The Customer agree to indemnify, hold harmless and defend the Supplier from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to the Customer's breach of any term or condition of this agreement, the Customer's use of the service, any violation by the Customer of any of the Supplier's policies, and/or any acts or omissions by the Customer. In such a case, the Supplier will provide the Customer with written notice of such claim, suit or action. The Customer shall cooperate as fully as reasonably required in the defense of any claim. The Supplier reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by the Customer.

## **Compliance**

The Customer will not use the service in any way or for any purpose that would violate, or would have the effect of violating, any applicable laws, rules or regulations or any rights of any third parties, including without limitation, any law or right regarding any copyright, patent, trademark, trade secret, music, image, or other

proprietary or property right, false advertising, unfair competition, defamation, invasion of privacy or rights of celebrity.

## Offensive Content

The Supplier does not allow any of the following content or links to such content, to be published on its Hosting Systems:

- Content of a pornographic, sexually explicit or violent nature.
- “Hate” content that could be reasonably considered as discriminatory in any way including by way of sex, race or age discrimination.
- Content of an illegal nature (including stolen copyrighted material).
- Content that is defamatory or violates a person’s privacy.
- Illegal gambling sites.

If The Supplier in its sole discretion determines that any customer content violates any law, including the Film and Publications Act, 65 of 1966 or this policy, it may:

- Request the customer to immediately remove such content; and/or
- Require the customer to modify such content; and/or
- Without notice, suspend or terminate access to any services; and/or
- Without notice, delete the offending content; and/or
- Notify the relevant authorities of the existence of such content (if required by law or otherwise), make any backup, archive or other copies of such material as may be required by such authorities, disclose such elements of the customer’s data as may be requested by the authorities and take such further steps as may be required by such authorities.

## Waiver

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

## Severability

In the event that any of the terms of this agreement become or are declared to be illegal or otherwise unenforceable, such term(s) shall be null and void and shall be deemed deleted from this agreement. All remaining terms of this agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph becomes applicable and, as a result, the value of this agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this agreement by written notice to the other.

## **No Agency**

This agreement does not create any agency, partnership, joint venture, or franchise relationship. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

## **Third party rights**

No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

## **Notices**

Any notice required to be given pursuant to this agreement shall be in writing, and shall be sent to the other party by first-class mail or e-mail.

## **Entire agreement**

This agreement in so far as it describes the specification, contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

## **Governing law and jurisdiction**

This agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Canadian law and submitted to the non-exclusive jurisdiction of the Canadian courts.