



Hosting Agreement

This Hosting Agreement (“Agreement”) comprises the terms and conditions that govern the provision of the hosting services, as defined below, to the clients (“Client”) of Lanex, LLC, with an office at 250 Bishop’s Way, Suite 100, Brookfield, Wisconsin 53005 (“Lanex”).

WHEREAS, Lanex is a software development and hosting firm that offers design, programming and hosting services; and

WHEREAS, Client desires to have Lanex provide certain hosting services as more particularly set forth in Schedule A (“Hosting Services”).

WHEREAS, Lanex desires to provide such Hosting Services to Client pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. **Hosting Services.** Subject to Client’s payment of the applicable fees for the Hosting Services described herein as set forth in Section 4 (“Hosting Fees”), Lanex will provide Client, on a non-exclusive basis, the Hosting Services described herein through which Client and Client’s customers may access and use the Hosted Application. Lanex will (i) maintain at its data center the equipment upon which the Hosted Application will reside, together with all required third party software; (ii) utilize its platform to host the Hosted Application; and (iii) provide Client with real-time access to the Hosted Application in order for Client to run the Hosted Application and use it for its intended purposes.
2. **Limitation on Use of Hosting Services**
 - 2.1. **Use by Client.** Client acknowledges and agrees that Client may use the Hosting Services only for its internal operations and for providing services to its customers. Client shall not have the right to use the Hosting Services to provide services to third parties other than its customers.
 - 2.2. **Software.** This Agreement solely covers the Hosting Services provided by Lanex. No license to use any software is explicitly stated or implied within this

Agreement, all software applications must be purchased and/or licensed separately.

3. **Access to Hosted Application.** Access rights granted to Client shall be limited to those rights necessary to use the functions provided in the Hosted Application, and necessary for its use. Lanex reserves the right to restrict or prevent access to: (i) any and all functions that access critical server or system resources; or (ii) directly modify the Hosted Application directories or database.
4. **Hosting Fees.** Client agrees to pay all fees relating to services provided by the Company which are agreed upon by Lanex and Client at the time of the order and are displayed at <http://www.lanex.com/services/hosting/hosting-prices>
5. **Domain Names.** Lanex will take appropriate steps in order to register domain names on behalf of the Client when requested. Client assumes final responsibility for renewing their respective domain names. In the case of abandoned domain names: If Lanex does not receive full and timely payment of Client's domain name, or is not notified by the Client and instructed to renew the domain name 30 days prior to the expiration date, the domain name will be considered abandoned by Client and Lanex may choose to hold or release the domain name to the public. Client must check and take appropriate actions to renew domain names before expiration. Lanex does not take responsibility for failing to renew domain names.
6. **Support Services.** Support services will be billed on a time and materials basis. Support services include, but are not limited to: setting up e-mail software on Client's machine remotely, setting up e-mail on a mobile device, mailbox changes, site configuration changes and/or troubleshooting.
7. **Ownership of Data and Operating System.** As between Lanex and Client, Client owns all data transmitted to Lanex under this Agreement by Client. Lanex may keep records of such data as may be necessary to comply with applicable laws and regulations or to verify Client's system usage levels. All production systems, programs, operating instructions, and other documentation prepared and/or provided by Lanex to Client shall be and remain Lanex's property.
8. **Client Responsibilities and Acknowledgements.** Client acknowledges, agrees and understands that: (i) the Hosted Application will be housed at Lanex's chosen hosting facility, and will be operated on a server or servers as determined by Lanex; (ii) Client has purchased or legally obtained licenses for the Hosted Application, and has the right to have Lanex provide the Hosting Services outlined in this Agreement; (iii) Client will only use the Hosted Application in accordance to each application's license agreement; and (iv) this agreement does not grant Client any additional rights above those included in the Hosted Application's license agreement to utilize, distribute, or make available the Hosted Application to anyone within the Client's organization, or any third parties.
9. **Term, Termination, Renewal.**
 - 9.1. **Term/Renewal.** All terms and conditions of this agreement shall be in full force and effect during from the date of customer order and any periods hereunder. This agreement shall automatically renew for successive equivalent periods, unless

notice is given by either party of its intent to terminate the agreement. Any fees paid to Lanex for services performed are not subject to refund.

- 9.2. **Termination.** Lanex shall have the right to immediately terminate this Agreement if Client is in breach of this Agreement, including but not limited to failure to pay Hosting Fees, and the breach is not cured within thirty (30) days of receiving written notice of such breach.
- 9.3. **Effect.** Upon termination of this agreement, access to the Hosted Application will be immediately discontinued.
10. **Confidential Information.** Client will not disclose to any third party any confidential or proprietary information of Lanex or any technical information relative to the setup and security of the Hosting Services unless such disclosure is approved in writing by Lanex.
11. **DISCLAIMER OF WARRANTIES.** ALL HOSTING SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE PROVIDED OR PERFORMED ON AN "AS IS" BASIS AND CLIENT'S USE OF THE HOSTING SERVICES IS SOLELY AT ITS OWN RISK. CLIENT'S EXCLUSIVE REMEDY IS TERMINATION AS SET FORTH IN PARAGRAPH 7 OF THIS AGREEMENT. LANEX DOES NOT MAKE, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. LANEX DOES NOT WARRANT THAT THE HOSTING SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE, WITHOUT SLOW RESPONSE TIME OR COMPLETELY SECURE. IN NO EVENT SHALL LANEX BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY LOSSES, LOST PROFITS, LOST OR STOLEN DATA, DAMAGES, DELAYS INTERRUPTIONS, OR VIRUSES ARISING OUT OF OR RELATED TO THIS AGREEMENT REGARDLESS OF THE BASIS OF THE CLAIM. NOTWITHSTANDING ANYTHING TO THE CONTRARY, LANEX'S AGGREGATE LIABILITY TO CLIENT (INCLUDING ATTORNEY'S FEES), IF ANY, SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID TO LANEX BY CLIENT UNDER THIS AGREEMENT DURING THE ONE (1) MONTH IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED.
12. **Miscellaneous.**
 - 12.1. **Entire Agreement.** This Agreement, along with the documents specifically referenced herein and the attachments hereto, constitute the entire agreement of the parties with respect to its subject matter and supersede any prior agreements and understandings, whether oral or written, with respect to the specific subject matter of this Agreement. No modification, amendment or waiver of any provision of this agreement shall be effective unless approved in writing by both parties.
 - 12.2. **Governing Law and Claims.** This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of Wisconsin.
 - 12.3. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement or a breach hereof, may at the request of either party be finally resolved settled by binding arbitration in the State of Wisconsin, in accordance with the rules of the American Arbitration Association, and the judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the preceding sentence, upon the occurrence of any controversy or claim for which a party is seeking

equitable relief, such party may seek such equitable relief in any court of law with proper jurisdiction and venue. The conduct of such arbitration shall be subject to the arbitration law of the State of Wisconsin. The fees of the arbitrator(s) shall be borne equally by the parties, unless otherwise determined by the arbitrator(s).

- 12.4. Severability. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a court with jurisdiction over the parties to this Agreement, such provision shall be deemed to be restated or redacted to reflect as nearly as possible the original intention of the parties in accordance with applicable law, and the remainder of this Agreement shall remain in full force and effect.
- 12.5. Notice. Any notice required to be given pursuant to the provisions of this Agreement shall be displayed on the Lanex website at www.lanex.com/prices.aspx. Please review periodically as policies are subject to change at any time.
- 12.6. Independent Contractor. Each party is an independent contractor hereunder and this Agreement shall not in any way create a partnership, joint venture, employer-employee, franchisor-franchisee or agency relationship between the parties.
- 12.7. Compliance with Laws. Client shall comply with all laws, statutes and regulations governing or otherwise applicable to the use of the Hosting Services.
- 12.8. Transfer and Assignment. This Agreement and any rights hereunder may not be assigned or otherwise transferred by Client without the prior written consent of Lanex, which may be withheld for any reason or no reason. This Agreement shall be freely assignable and transferable by Lanex for any reason, and Lanex shall be allowed to use additional employees, subcontractors or independent contractors for the provision of the Services without the prior consent of Client.
- 12.9. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 12.10. Waiver of Breach and Survival. The waiver by either party of a breach of any provision hereof shall not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself nor shall any delay on the part of either party to act upon any breach be deemed a waiver thereto. The sections of this Agreement that by their terms survive the termination or non-renewal of this Agreement shall so survive.
- 12.11. Force Majeure. In the event that the actions of either party, other than the payment of any amounts due hereunder, shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of utilities, riots, insurrection, war, terrorists attack, acts of God, or other reason beyond the party's reasonable control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

Schedule A

Hosting Services and Associate Policies

This document reflects the current hosting policies of Lanex, and will be maintained on our website, located at <http://www.lanex.com/> . The Lanex website also contains a general representation of pricing and services.

Site Content

Lanex reserves the right to not serve any customer depending on content policies and serving capacities.

Lanex does not host any pornography, multi level marketing, get-rich-quick schemes or any other content that we feel will adversely affect Lanex, our upstream providers, or our other customers ' reputations.

To report abuse, please contact Lanex.

Site Testing

Customers are responsible for periodically visiting and testing their sites, and related e-mail operation, shopping carts, and linking.

Email Usage

Email accounts may mail up to 3000 messages per month (or an average of 100 per day) unless other arrangement are made in advance. A \$1.00 charge per additional message charge will be added to your account if you do not abide by this rule. There are no charges for incoming email messages. Users sending more than this amount of messages MUST use a mailing list. Contact Lanex for assistance and pricing for mail list services.

Lanex scans email for viruses and to identify SPAM. These services are provided for your benefit, but no warranty is made as to the effectiveness of the program. The identification of viruses and SPAM are by nature reactive, so it is up to the customer to be prudent in the opening of email messages.

Lanex expects its customers to abide by the rules and guidelines listed at <http://mail-abuse.org/rbl/manage.html>

E-mail Backups

Lanex is not responsible for backup of Client e-mails. Client should take proper steps to maintain up to date backups of their e-mail at all times.

NOC Access & Servers

Your access to the NOC is by appointment only, and subject to Lanex's approval. Approved appointments require a Lanex staff member to be present.

Access to your server's data or your data on our web or database servers is restricted. Requests to grant access to the server or data must be made by email or fax and be sent from an authorized person. This is done to protect your data and code, and to provide documentation as to who has access to what.

Co-located servers may be located behind a firewall with port restrictions as specified by the customer, if desired.

Lanex will strive to maintain its servers, and monitor their activity in a professional manner, but is not liable for data loss due to the activities of hackers or crackers. Customers should regularly create off site backups of their code and data.

There may be restrictions related to server extensions, ActiveX controls, PERL scripts, and applications that are used on Lanex's web servers. If you are planning to use this type of resources please contact Lanex to make sure that they will not affect the stability or availability of the server for you or others hosting sites on that server.

Contacting Lanex

The Lanex telephone number can be accessed 24 hours a day, 7 days a week. Lanex maintains on-call staff members for technical emergencies. Lanex may use its judgment as to what constitutes an emergency. (For instance, adding or checking the availability of an email box may not be an emergency. Please use common sense when contacting us for off-hours service.)

Availability of Services

Lanex shall endeavor to provide the Client with hosting services for twenty-four (24) hours a day, seven (7) days a week throughout the term of this agreement.

Backups

Lanex will use its best efforts to maintain the following backup schedule: Databases are backed up to a combination of internal raid arrays and external drives on a backup server on business days. Web site content is backed up weekly to a combination of internal raid arrays and external drives on a backup server. Lanex maintains backup disk capacity to allow us to restore your content for 2 weeks for daily or weekly backed up data. Web site logs, media content (Video and Audio Files), and email messages are not backed up. All backup files are stored in an encrypted format. A weekly backup to an external drive is rotated off site and is stored in a fire resistant safe.

Lanex does not maintain backups of email messages on its network or servers. Email backups are the responsibility of customers.

File restoration will be performed on a time and materials basis. We suggest that web site administrators also back up content remotely on a periodic basis as well for additional content security. These policies may change from time to time.

Termination

The Client shall be entitled to terminate the agreement at any time by giving Lanex not less than thirty (30) days written notice of termination. Upon termination of the agreement, fees and expenses owed by the Client to Lanex shall become due and payable.

The Client understands that if Client has requested a "Transfer Request" where files are moved for the Client by the Company that Lanex may charge a fee for the time it takes for the transfer of files or other related labor that is required at the billable rate of the Client at the time of termination.