



## MASTER SERVICE AGREEMENT (MSA) - 2010

This **Master Service Agreement** ("**Master Service Agreement**" or "**Agreement**") is by and between BizCom Web Services, Inc. (**the "Company" or "BizCom"**)  
5711 Six Forks Road, Suite 211  
Raleigh, NC 27609

and

the party ("**Client**" or "**You**" or "**Your**") named in the related proposal, order and/or quotation (together with any subsequent order forms submitted by Client, the "**Order Form**").

### **Company and You agree to the following provisions:**

PLEASE CAREFULLY READ THIS AGREEMENT, INCLUDING THE HOSTING PLAN OR PLANS YOU HAVE CHOSEN, BEFORE FILING IT IN A SAFE PLACE.

BY USING COMPANY'S SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, (below), COMPANY'S ACCEPTABLE USE POLICY, AND COMPANY'S NO-SPAM POLICY. You agree You shall use the Company's services only for lawful purposes. Company does not intend to systematically monitor the content that is submitted to, stored on or distributed or disseminated by Client via Company Hosting Services (the "**Client Content**"). Client Content includes content of Client's customers and/or users of Client's website. Accordingly, under this Agreement, You will be responsible for Your customers content and activities on Your website. Notwithstanding anything to the contrary contained in this Agreement, Company may immediately take corrective action, including removal of all or a portion of the Client Content, disconnection or discontinuance of any and all Services, or termination of this Agreement in the event of notice of possible violation by Client of the Acceptable Use Policy. In the event Company takes corrective action due to a violation of the Acceptable Use Policy, Company shall not refund to Client any fees paid in advance of such corrective action. Client hereby agrees that Company shall have no liability to Client or any of Client's customers due to any corrective action that Company may take (including, without limitation, disconnection of Services).

#### **1. Provision of Services**

The Company agrees to provide You with those hosting and related services as described in the Proposal and in the Shared Web and Mail Hosting Service Level Agreement (SLA) (collectively the "Hosting Services") in exchange for Your payment for the Hosting Services, and Your compliance with the terms and conditions of this Agreement, and Your compliance with the Company's Acceptable Use and No-Spam Policies, both incorporated by reference herein. Provision of the Hosting Services shall commence once the Company has received both Your payment for the Hosting Services and this Agreement has been accepted by You or as otherwise set forth in the Proposal.

#### **2. Agreement Term.**



### **2.1 Monthly Hosting Plan Agreement Term.**

For hosting plans billed on a monthly basis, the Agreement Term is either the Initial Term or Renewal Term as defined herein. The Initial Term is defined as the time period from the date of your initial payment or acceptance of this Agreement, whichever occurs later, through the remainder of the calendar month in which this Agreement was accepted. The Renewal Term for hosting plans billed on a monthly basis is defined as one calendar month beginning at the end of any prior Agreement Term. All terminations by You during a monthly billing cycle become effective on the last day of that billing cycle. You'll remain responsible for all fees and charges incurred until then and won't be entitled to any partial month credits or refunds.

### **2.2 Prepaid Hosting Plan Agreement Term.**

Prepaid Hosting Plans are defined as plans that prepay for more than one month of service fees in advance. For prepaid hosting plans, the Agreement Term is the period between the Agreement Term Begin Date, which is the day of your initial payment or acceptance of this Agreement, whichever is later, or at the end of your prior Agreement Term if the Agreement is auto-renewing, and the Agreement Term End Date, which is the day before the same date as the Begin Date the following calendar year.

### **3. Automatic Renewal.**

Unless the Agreement is earlier terminated in accordance with its terms or unless a specific new Agreement term is requested by You, this Agreement shall automatically renew at the end of each prior Agreement Term, either for the same period of time period as the prior Agreement Term or for one calendar month, whichever is longer. When a new Agreement term begins, the then current Master Service Agreement and Service Level Agreement shall apply.

### **4. Termination without cause.**

TERMINATION OF YOUR ACCOUNT WILL NOT CANCEL OR WAIVE ANY FEES OR OBLIGATIONS OWED TO THE COMPANY PRIOR TO OR AT ACCOUNT TERMINATION. YOUR DATA, CONTENT, AND ACCOUNT SETTINGS ARE IRREVOCABLY DELETED AFTER ACCOUNT TERMINATION, INCLUDING BUT NOT LIMITED TO, WEB SITE CONTENT, DATABASES, AND EMAIL MESSAGES. SECURING ALL NEEDED DATA FROM YOUR ACCOUNT PRIOR TO ACCOUNT TERMINATION SHALL BE SOLELY YOUR RESPONSIBILITY.

#### **4.1 Termination by You without cause.**

You may terminate this Agreement at any time without cause by providing a written letter to [legal@bizcomweb.com](mailto:legal@bizcomweb.com) one month prior to the beginning of any Renewal Term. For prepaid hosting plans, termination of your account without cause prior to the end of the Agreement Term shall incur an Early Termination Fee as defined in Section 4.3. If You terminate without cause a monthly-billed hosting account effective prior to the end of the Agreement term, Company shall not be required to refund to You amounts hosting fees already paid.



#### **4.2 Termination by Company without cause.**

The Company may terminate this Agreement without cause by providing written or electronic mail notice of termination to your BizCom email contact address not less than fifteen calendar days prior to the effective termination date. For prepaid hosting plans, Company shall refund paid fees to You as described in section 4.3. For monthly hosting plans, if the effective termination date occurs prior to the end of the Agreement Term, Company shall refund or not charge You the monthly hosting fees for the month in which Hosting Services terminate.

#### **4.3 Refunds for termination without cause.**

Fees for non-recurring services and set up fees shall not be refunded. Any fees previously waived or discounts applied may be reinstated if You terminate the account for no cause during the term or if You breach this Agreement.

##### **4.3.1 Monthly hosting account refunds.**

If You terminate without cause a monthly hosting account effective prior to the end of the Agreement term, Company shall not be required to refund to You any hosting fee amounts already paid.

##### **4.3.2 Prepaid hosting account refunds.**

Prepaid hosting plans are divided into a number of Periods, which are equal to the number of months of the Agreement Term plus one. These periods consist of the remainder of the calendar month in which the Agreement Term begins, the full calendar months in the Agreement Term, and the remainder, if any, of the calendar month in which the Agreement Term ends. Refunds are calculated based upon only the full Periods remaining on the Prepaid hosting account, including the amount for the last Period that may or may not be less than a full calendar month. The Early Termination Fee is defined as 100% (one hundred percent) of prepaid fees attributable to six (6) full periods, or the remaining amount on the contract whichever is lesser. If You terminate a prepaid hosting account prior to the end of the Agreement Term without cause, a refund equal to the prepaid hosting fees attributable to the remaining Period(s) LESS the Early Termination Fee, any unpaid fees, any previously waived fees and any discounts that were previously taken, shall be issued. Previously waived fees and discounts shall include but not be limited to, free months of service at signup and any promotional discounts. This refund will be issued within thirty (30) calendar days of account termination to the credit card on record at the time of termination. In the event that a refund is calculated to be less than \$10.00 no refund shall be given. All plan or feature changes must result in a total fee that is equal to or greater than the prepaid fees remaining at the time of the change. No refunds shall be issued for any plan downgrades or elimination of plan features. If the Company terminates a prepaid hosting account prior to the end of the Agreement Term without cause, a refund equal to the prepaid hosting fees attributable to the remaining Period(s) PLUS the fee for the Period in which the contract is terminated LESS any unpaid fees shall be issued within thirty (30) calendar days of account termination to the credit card on record at time of



termination. This refund shall be Your sole remedy for Company's early termination of the Agreement. In no event shall the refund be greater than the hosting fees paid during the Agreement Term in effect at termination.

**5. Termination for cause.**

If You would like to terminate your account for the Company's violation of the terms of this Agreement or the Service Level Agreement, You shall provide to Company's Legal Department in writing, via email (Legal@bizcomweb.com) or via certified mail, the details of the Company's violation and allow the Company a reasonable time to cure any such violation prior to termination of your account. THE COMPANY MAY TERMINATE HOSTING SERVICES TO YOU IMMEDIATELY AND WITHOUT PRIOR NOTICE (TERMINATION FOR CAUSE) FOR ANY OR ALL OF THE FOLLOWING REASONS: ANY MATERIAL BREACH OF THIS AGREEMENT, WHICH INCLUDES BUT IS NOT LIMITED TO VIOLATION OF THE COMPANY'S ACCEPTABLE USE OR NO SPAM POLICIES; ANY NONMATERIAL BREACH OF THIS AGREEMENT WHICH REMAINS UNCURED BEYOND A REASONABLE TIME (NOT TO EXCEED 30 DAYS) AFTER BREACH NOTIFICATION; AND FAILURE TO PROVIDE AND KEEP CURRENT ALL HOSTPILOT CONTACT AND BILLING INFORMATION. IN THE EVENT OF TERMINATION FOR CAUSE, THE COMPANY SHALL NOT REFUND ANY PAID FEES. TERMINATION FOR CAUSE WILL NOT CANCEL OR WAIVE ANY FEES OWED TO THE COMPANY PRIOR TO ACCOUNT TERMINATION.

**6. Payment Terms; Excess Use Charges.**

You agree to be billed at the beginning of the Agreement Term via your credit card or automatic draft checking account for all recurring and one-time charges, including but not limited to late fees and termination charges, for all Company's services ordered by You and for any fees You owe to the Company. You further agree to be billed for any additional services ordered at the time the additional services are ordered and also at the beginning of each Renewal Term. Invoice information is provided to You by the Company via the Billing System Website located at <https://billing.bizcomweb.com>. You understand and agree that You are responsible for monitoring and maintaining your accounts within all plan-specified limits. In the event your usage exceeds these limits for your account, You agree the Company may charge You for such excess usage via your credit card at the then-published price on the Company's web site. Usage and associated charges for excess usage shall be determined based solely by the Company's statistical information. Unused monthly allotments shall not accrue or carry over from one month to any other month.



**7. Taxes.**

The Company shall not be liable for taxes and other governmental fees and assessments to be paid which are related to purchases made from You or from the Company's server. You agree that You shall be solely responsible for all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of services provided to You by the Company.

**8. "Beta" Hosting Products.**

This section applies only to customers with accounts created on experimental, testing "beta" plans and platforms (beta accounts). In exchange for the Company providing Beta Account services, You agree to comply with this Agreement as it applies to Beta Accounts. All provisions of this agreement shall apply to Beta Accounts, with the exception of paragraphs 1, 2, 3, and 6. Beta Account services are provided to You on an AS IS, AT YOUR OWN RISK basis. Service Level Agreement commitments do not apply to beta accounts. YOU ARE STRONGLY DISCOURAGED FROM USING ACCOUNTS ON "BETA" PLANS OR PLATFORMS FOR HOSTING ANY PRODUCTION APPLICATIONS, PRODUCTION WEB SITES, OR FOR STORING SENSITIVE OR VALUABLE DATA. The Company may but shall not be required to change Beta Account services. The Company hereby notifies You that Beta Account service changes may not be compatible with the prior services and that loss of functionality or interruption of service may occur as a result of such changes. YOU UNDERSTAND AND AGREE THAT THE COMPANY SHALL NOT BE REQUIRED TO REMEDY NOR WILL IT BE LIABLE FOR SUCH INCOMPATIBILITIES, FUNCTIONALITY LOSSES, OR INTERRUPTIONS. The Company may terminate some or all Beta Accounts at any time by providing to You fifteen (15) day notice of such termination.

**9. Materials and Products.**

Any material and data You provide to the Company in connection with the Company's Hosting Services shall be Server Ready. Server Ready is defined as being in a condition and form, as determined solely by the Company, which requires no additional manipulation or verification on the part of the Company. Attempting to place or requesting placement of non-Server-Ready material or data on the Company's servers shall be a breach of this Agreement. The Company may, in its sole discretion, reject material or data that You have placed, attempted to place, or have requested be placed on the Company's servers. The Company agrees to notify You immediately of its rejection of the material or data and provide You with an opportunity to amend or modify the material or data to meet the requirements of the Company.



## **10. How We Calculate Your Bill**

Your bill reflects the fees and charges in effect under your Hosting Plan at the time they're incurred. You can dispute your bill, but only within thirty (30) days of receiving it. Unless otherwise provided by state law, You must still pay any disputed charges until the dispute is resolved.

## **11. Payments, Deposits, Credit Cards, and Checks.**

Payment is due in full as stated on your bill. IF WE DON'T RECEIVE PAYMENT IN FULL WHEN DUE, WE MAY, TO THE EXTENT PERMITTED BY THE LAW OF THE STATE OF THE BILLING ADDRESS WE HAVE ON FILE FOR YOU AT THE TIME, CHARGE YOU A LATE FEE OF UP TO 1.5 PERCENT PER MONTH (18 PERCENT ANNUALLY), OR A FLAT \$15 A MONTH, WHICHEVER IS GREATER, ON UNPAID BALANCES. IF YOU DO NOT PAY YOUR BILL ON TIME OR MAKE PAYMENT ARRANGEMENTS IN A TIMELY FASHION, YOU WILL BE SENT TO COLLECTIONS AND A 35% FEE WILL BE ADDED TO YOUR BILL.

### **11.1 Service Disconnection.**

If Your service is disconnected for any reason and You want to have your service reactivated, You will need to pay a new activation fee.

### **11.2 Refunds.**

We refund final credit balances of less than \$5 only upon request. We will not honor limiting notations You make on or with your checks. We may charge You a \$30 fee on checks returned by your bank for any reason.

## **12. Disclaimer of Warranties; Limitation of Liability.**

THE COMPANY PROVIDES HOSTING SERVICES AS IS AND WITH ALL RISKS. YOU EXPRESSLY AGREE THAT USE OF THE COMPANY'S HOSTING SERVICES IS AT YOUR SOLE RISK. THE COMPANY, ITS AGENTS, AFFILIATES, VENDORS AND THE LIKE DO NOT REPRESENT OR WARRANT THAT THE HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR COMPLETELY SECURE; NEITHER DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE HOSTING SERVICES OR AS TO THE ACCURACY, RELIABILITY, OR CONTENT OF ANY INFORMATION SERVICE OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THE HOSTING SERVICES. THE COMPANY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES NOT EXPRESSLY CONTAINED IN THIS AGREEMENT. YOU AND THE COMPANY AGREE THAT THE TERMS OF THIS



AGREEMENT SHALL NOT BE ALTERED DUE TO CUSTOM OR USAGE OR DUE TO THE PARTIES' COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT. IN NO EVENT SHALL THE COMPANY, ITS AGENTS, AFFILIATES AND VENDORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE, THAT RESULT FROM YOUR USE OR INABILITY TO USE THE HOSTING SERVICES, WHETHER FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR DIRECTORIES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR FOR ANY FAILURE OF PERFORMANCE, REGARDLESS OF WHETHER THE COMPANY HAS BEEN ADVISED OF SUCH DAMAGES OR THEIR POSSIBILITY, OR WHETHER THE ABOVE EVENTS ARE LIMITED TO ACTS OF GOD, COMMUNICATION FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO THE COMPANY'S RECORDS, PROGRAMS, OR THE HOSTING SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE. YOU AGREE THAT THE COMPANY'S TOTAL LIABILITY AND YOUR SOLE REMEDY FOR ANY NON-ACCESSIBILITY TO THE HOSTING SERVICES OR OTHER DOWNTIME IS LIMITED TO THE REMEDIES LISTED IN THE SHARED WEB HOSTING SERVICE LEVEL AGREEMENT. HOWEVER, IN NO EVENT SHALL THE COMPANY'S LIABILITY, INCLUDING ALL FEES, ATTORNEY FEES, AND COSTS, EXCEED THE TOTAL AGGREGATE AMOUNT PAID BY YOU TO THE COMPANY UNDER THIS AGREEMENT DURING THE AGREEMENT TERM. THE COMPANY WILL EXERCISE NO CONTROL OVER THE CONTENT OF THE INFORMATION PASSING THROUGH THE COMPANY'S NETWORK EXCEPT THOSE CONTROLS EXPRESSLY PROVIDED HEREIN.

**13. Patents, Copyrights, Trademarks, and Other Intellectual and Proprietary Rights.**

Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. You agree that all right, title, and interest in any Hosting Services, including their constituent parts, provided to You are the property of the Company, its agents, affiliates and vendors. The Hosting Services and their constituent parts are only for your use in connection with the Hosting Services provided to You as outlined in this Agreement. You expressly warrant and represent to the Company that You have the right to use any patented, copyrighted, trademarked or proprietary material which You use, post, or otherwise transfer to or by way of the Company servers. Breach of this warranty shall be a material breach of this Agreement.



#### **14. Hardware, Equipment, and Software.**

You are responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access Company servers including adequate Internet connectivity necessary for You to access the Hosting Services fully. Company makes no representations, warranties, or assurances that your equipment will be compatible with the Hosting Services. Company hereby grants to Client a limited, non-exclusive, non-transferable, royalty-free license, exercisable solely during the term of this Agreement, to use Company technology, products and services solely for the purpose of accessing and using the Hosting Services. Client may not use Company's technology for any purpose other than accessing and using the Hosting Services. Except for the rights expressly granted above, this Agreement does not transfer from Company to Client any Company technology, and all rights, titles and interests in and to any Company technology shall remain solely with Company. Client shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the Company. Company owns all right, title and interest in and to the Hosting Services and Company's trade names, trademarks, service marks, inventions, copyrights, trade secrets, patents, know-how and other intellectual property rights relating to the design, function, marketing, promotion, sale and provision of the Hosting Services and the related hardware, software and systems ("Marks"). Noting in this Agreement constitutes a license to Client to use or resell the Marks.

#### **15. Age and Capacity.**

You expressly represent and warrant that You and any person to whom You grant access to your Company account have reached the age of eighteen and that You are not subject to an limitation on your ability to enter into this Agreement.

#### **16. Indemnification.**

You agree that You shall defend, indemnify, save, and hold the Company harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against Company, its agents, servants, officers, and employees, that may arise or result from (i) any injury to person or property caused by any products sold or otherwise distributed in connection with the Hosting Services provided to You; (ii) any material supplied by You infringing or allegedly infringing on the property or proprietary rights of a third party; (iii) copyright infringement; (iv) any defective product which You sold or distributed by means of the Hosting Services; and (v) Your actual or alleged use of the Hosting Services in violation of: (A) Company's Acceptable Use Policy or No Spam Policy, (B) any other portion of the Agreement, or (C) applicable law, by any person regardless of whether such person has been authorized to



use the Hosting Services by You, except for unauthorized use that results from Company's failure to perform its obligations under this Agreement.

**17. Miscellaneous. Governing Law; Jurisdiction; Forum.**

This Agreement shall be governed by and construed in accordance with the laws of the state of North Carolina without regard to its conflicts of laws or its principles. You agree, in the event any claim or suit is brought in connection with the Company's provision of the Hosting Services to You, to submit to the jurisdiction of the state of North Carolina, and agree to the courts of Wake County, North Carolina as the appropriate forum.

**17.1 Severability.**

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

**17.2 Waiver; No Oral Modification.**

No waiver by the Company of any breach by You of any of the provisions of this agreement shall be deemed a waiver of any preceding or succeeding breach of this agreement. No such waiver shall be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing. No modification of this agreement shall be effective unless it is in writing and signed by the parties hereto, and then only to the extent set forth in such writing.

**17.3 No Assignment.**

No right, benefit or duty under this Agreement shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void.

**17.4 Surviving Clauses.**

Clauses 7, 8, 10, 11, 14, and 15 of this Agreement shall survive for the lesser of a period of two years after termination of your account or the maximum length permitted by law.

**17.5 Entire Agreement; Third Party Beneficiaries.**

This Agreement together with the Proposal, the Service Level Agreement, Acceptable Use Policy, No-Spam Policy, along with any other exhibits or schedules attached hereto,



constitutes the entire agreement for provision of the Hosting Services to You and supersedes all other prior agreements and understandings, both written and oral, between the You and the Company with respect to the Hosting Services. You understand and agree that the Company and You intend to include, as the sole third party beneficiaries of this Agreement, Company's software vendors, with all rights and remedies available as if such vendors were a party to this Agreement.