

**PLEXHOSTED MASTER SERVICE AGREEMENT
– MANAGED OPERATIONS AND SECURITY**

BY EXECUTING THIS AGREEMENT, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS MASTER SERVICE AGREEMENT, THE ATTACHED APPENDIX 1: MICROSOFT CUSTOMER AGREEMENT, THE PLEXHOSTED ACCEPTABLE USE POLICY, THE PLEXHOSTED SERVICE LEVEL AGREEMENT (THE “SERVICE LEVEL AGREEMENT” OR “SLA”), THE PLEXHOSTED PRIVACY POLICY AND THE PLEXHOSTED NO-SPAM POLICY, EACH OF WHICH MAY BE FOUND AT <http://www.plexhosted.com/legal> (COLLECTIVELY, THIS “AGREEMENT”).

BY CLICKING "I AGREE", ORDERING AND/OR USING PLEXHOSTED SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS MASTER SERVICE AGREEMENT, THE ATTACHED APPENDIX 1: MICROSOFT CUSTOMER AGREEMENT, THE PLEXHOSTED ACCEPTABLE USE POLICY, THE PLEXHOSTED SERVICE LEVEL AGREEMENT (THE “SERVICE LEVEL AGREEMENT” OR “SLA”), THE PLEXHOSTED PRIVACY POLICY AND THE PLEXHOSTED NO-SPAM POLICY, EACH OF WHICH MAY BE FOUND AT <http://www.plexhosted.com/legal> (COLLECTIVELY, THIS “AGREEMENT”).

(For present purposes, “Person” means an individual, corporation, company, cooperative, partnership, trust, unincorporated association, entity with juridical personality or governmental authority or body, and pronouns that refer to a Person shall have a similarly extended meaning. “Includes” and “including”, when used in this Agreement, mean “including (or includes) without limitation”)

THIS AGREEMENT is by and between PLEXHOSTED LLC, with offices at P.O. Box 170074, Atlanta, GA 30317-9998 (“PLEX”), and the recipient and payer of Services hereunder as identified as part of the subscription process for PLEX Services (“You” and, where appropriate, “Your”, “Yours” or “Yourself”).

DESCRIPTION OF THE SERVICES:

1. **Managed Devices.** Devices that belong on or are in use by a user with Microsoft 365 Business Premium subscription and/or managed with Microsoft Intune mobile device management (“MDM”) and/or mobile application management (“MAM”) platforms are considered as managed devices (“MANAGED DEVICES”).
2. **Managed Applications.** Applications deployed on MANAGED DEVICES via MDM and MAM platforms are considered as managed applications (“MANAGED APPLICATIONS”).
3. **Managed Users.** Users licensed with Microsoft 365 business Premium subscription or other subscriptions that have the same or extended features and functionality as Microsoft 365 Business Premium subscription or users with MANAGED DEVICES are considered as managed users (“MANAGED USERS”) and require PlexHosted – Managed Operations and Security subscription.
4. **Managed Cloud Applications.** Cloud services such as Microsoft 365 (Exchange online, SharePoint Online, OneDrive, Teams), Microsoft Intune, Microsoft Defender for Office 365, Microsoft 365 for Endpoint, Azure Information Protection and Azure Active Directory are considered as managed cloud applications (“MANAGED CLOUD APPLICATIONS”).
5. **Managed Security Platform.** Enterprise grade endpoint and cloud applications security platforms Microsoft Defender for Office 365, Microsoft Defender for Business and Microsoft Defender for Endpoint are considered as managed security platforms (“MANAGED SECURITY PLATFORMS”).
6. **Remote Support for Administrators.** PLEX will provide IT consultation, maintenance, and support for company IT administrators for the MANAGED CLOUD APPLICATIONS and MANAGED SECURITY PLATFORMS.

7. **Remote Support for End-Users.** PLEX will provide break-fix support for the MANAGED USERS with MANAGED DEVICES for MANAGED DEVICES and MANAGED APPLICATIONS. PlexHosted will make a best effort to resolve as many issues as possible remotely with the right to escalate issues to the software developer.
8. **Project Work.** Projects outside the scope of the above to maintain the existing network, software or cloud applications are billed separately including but not limited to operational environment changes expanding beyond what is currently in use in the operational environment are beyond the scope of this Agreement. Charges will be billed separately at PLEX's then current hourly rate for service, currently One Hundred Dollars (\$100).
9. **Automated Support.** Using Microsoft Intune, Microsoft Defender, Microsoft Lighthouse, Azure Sentinel services and RMM solution, automated support will be provided to MANAGED DEVICES, MANAGED APPLICATIONS and MANAGED CLOUD APPLICATIONS ("AUTOMATED SUPPORT"). This includes an automatic device's OS re-provisioning, installation of critical updates for Windows Operating Systems, Apple Operating Systems, Microsoft Office Applications. Automated support includes hardware and software auditing, malware, phishing, spam protection and remediation, links and attachments protection, threat and vulnerability protection, threat detection and response, attack surface reduction and automatic investigation and remediation.
10. **Endpoint Protection.** Windows based MANAGED DEVICES are protected with MANAGED SECURITY PLATFORMS.
11. **Cloud Protection.** MANAGED CLOUD APPLICATIONS are protected with MANAGED SECURITY PLATFORMS.
12. **Data Protection.** Data protection / data governance mechanisms such as data loss prevention ("DLP"), security labels, conditional access will be applied to the MANAGED USERS, MANAGED DEVICES and MANAGED CLOUD APPLICATIONS to prevent unwanted data leak.
13. **End-User Protection.** Multi-factor authentication and conditional access policies will be enforced for all users for MANAGED CLOUD APPLICATIONS.
14. **Managed Detection and Response.** PLEX monitors activities inside MANAGED SECURITY PLATFORMS, respond and remediate threats for MANAGED DEVICES and MANAGED CLOUD APPLICATIONS.

Security Compliance Management. PLEX implements and manages all cybersecurity controls of cybersecurity framework CIS Controls v8 Implementation group 1 on MANAGED DEVICES and MANAGED CLOUD APPLICATIONS.
16. **Security Compliance Maintenance.** PLEX maintains operational environment security compliance and documentation listed below for MANAGED DEVICES and MANAGED CLOUD APPLICATIONS to comply to cybersecurity framework CIS Controls v8 Implementation group 1.
 - a. Asset Tracking;
 - b. Onboarding procedure;
 - c. Offboarding procedure;
 - d. Incident Response Contact List;
 - e. Incident Response Plan;
 - f. Incident Response Policy;
 - g. Incident Response Standard;
 - h. Access Control Policy;
 - i. Acceptable Use of Information Technology Resources Policy; and
 - j. Information Technology Policy.

17. **Cloud Backup Services.** Cloud backup services for Microsoft 365 (Exchange online, SharePoint online, OneDrive, Teams) are included.
18. **Email Migration Services.** Email migration services to Microsoft 365 (Exchange online) are included for organization and MANAGED USERS.
19. **File Migration Services.** File migration services to Microsoft 365 (SharePoint online, OneDrive) are included for organization and MANAGED USERS to augment or replace existing methods of file sharing.

PLEX and You agree as follows:

1. **SCOPE; ACCESS; SECURITY.**

- 1.1. **Provision of Services.** Subject to and in accordance with the terms of this Agreement, including any Appendices, PLEX grants You a limited, non-exclusive, non-sub-licensable, non-transferable, non-assignable, revocable license for the term of this Agreement to access and use the Services. For present purposes, "Services" means such Managed Operations and Security services and Microsoft Cloud Solution Provider services as Microsoft 365, Azure and other Microsoft-hosted online services that PLEX may offer from time to time. Services may be used by Your users for internal business purposes only. You agree to comply with the terms and conditions of this Agreement, including any Appendices, and with all applicable PLEX procedures and policies that further define use of the Services. You acknowledge and agree that the actions of any of Your users with respect to the Services will be deemed to be actions by You and that any breach by any of Your users of the terms of this Agreement, including any Appendices, will be deemed to be a breach by You.
- 1.2. **Account Information and Ownership.** You agree to maintain accurate account information by providing updates to PLEX promptly, but no later than three (3) business days, when any of Your account information requires change, including any relevant account contact or billing information. Failure by You, for any reason, to respond within three (3) business days to any inquiries made by PLEX to determine the validity of information provided by You will constitute a material breach of this Agreement. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to, or legal ownership of, any PLEX account or any portion thereof, including Your account, PLEX will resolve such dispute in its sole, reasonable discretion. In addition, in the event of such a dispute, PLEX may immediately suspend, alter, or terminate any relevant account, including Your account, or any portion thereof. You will reimburse PLEX for any legal fees and other fees incurred with respect to any dispute regarding control or ownership of Your account or Your data or the same of another PLEX customer. You acknowledge and agree that (i) the legal owner of all data on the account is You, the counterparty to this Agreement, and not any individual User, including any account contact registered with PLEX, regardless of any administrative designation (e.g., Administrator, Billing Contact, Owner, etc.); and (ii) PLEX may request any documentation it requires to establish ownership and rights to Your account and any related data; provided that any user with an administrative designation has the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.
- 1.3. **Account Security and Activity.** You acknowledge and agree that You are solely responsible for (i) maintaining the confidentiality and security of Your account access information, and (ii) all activities that occur in connection with Your account, whether initiated by You, by others on Your behalf or by any other means. You will notify PLEX immediately of any unauthorized use of Your account, access Information or any other actual or potential breach of security. You acknowledge and agree that PLEX will not be liable for any loss that You may incur as a result of any party using Your access information, either with or without Your knowledge and/or authorization. You further agree that You may be held liable for losses incurred by PLEX, any PLEX party, or another party due to any party using Your access information. PLEX strongly

recommends that You keep Your access information in a secure location, take precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. PLEX specifically disclaims all liability for any activity in Your account, whether authorized by You or not.

2. **LAWFUL USE OF THE SERVICES.** You agree to use all Services provided to You hereunder only for Your lawful, appropriate, and permitted internal purposes hereunder. In no event may You resell the Services. In addition, You may not use the Services if You are a competitor of PLEX (as determined by PLEX in its sole discretion). In the event that your use of the Services violates any law, rule or regulation or this Agreement, PLEX shall have the right to immediately terminate this Agreement and pursue any and all its other remedies.

3. **TERM, TERMINATION, CANCELLATION POLICY.**

3.1. **Term.** This Agreement's "Term" is comprised of the Initial Term and any Renewal Term. The Initial Term shall be for a period of twelve (12) months from the date that this Agreement is fully executed. The Renewal Term shall be the twelve (12) month period beginning at the end of the Initial Term and each subsequent twelve (12) month period thereafter. This Agreement shall renew automatically at the end of the Initial Term and each Renewal Term unless terminated in accordance with this Agreement either by You or by PLEX.

3.2. **Termination for Convenience and Cancellation Policy.** PLEX may terminate this Agreement without cause by providing written or electronic mail notice of termination to Your administrative email contact address not less than sixty (60) calendar days prior to the effective termination date.

3.3. **Termination for Cause.**

3.3.1 By You. To terminate Your account for PLEX's material breach of the terms or conditions of this Agreement, You shall provide to PLEX's legal department in writing, via email (legal@plexhosted.com) or via certified mail, the details of PLEX's material breach and allow PLEX thirty (30) days to cure any such violation prior to termination of this Agreement. You may only terminate this Agreement if PLEX fails to cure the alleged material breach within such thirty (30) day period.

3.3.2 PLEX may terminate any or all Services immediately and without prior notice (termination for cause) for any of the following reasons: any material breach of this Agreement, which includes any failure by You to make payment when due, violation of the PLEX's Acceptable Use or No-Spam Policies; or any non-material breach of this Agreement which remains uncured beyond a reasonable time after breach notification; and failure to provide and keep current all administrative contact and billing information. In the event of termination for cause, PLEX shall not refund any paid fees. Termination for cause will not cancel or waive any fees owed to PLEX as per this Agreement, which shall be due and payable immediately following any termination by PLEX for cause.

3.4. **Following Termination.** TERMINATION OF YOUR ACCOUNT WILL NOT CANCEL OR WAIVE ANY FEES OWED TO PLEX AS PER THIS AGREEMENT. YOUR DATA AND ACCOUNT SETTINGS SHALL BE IRREVOCABLY DELETED FIFTEEN (15) DAYS FROM THE DATE OF TERMINATION (OR AS OTHERWISE SET FORTH IN THE SLA) UNLESS YOU HAVE BY SUCH DATE PAID ALL AMOUNTS AND DAMAGES OWED TO PLEX, INCLUDING WEBSITE CONTENT, DATABASES, AND EMAIL MESSAGES. IT SHALL BE YOUR SOLE AND EXCLUSIVE RESPONSIBILITY TO SECURE ALL NECESSARY DATA FROM YOUR ACCOUNT PRIOR TO TERMINATION.

4. **FEES, BILLING, TAXES, CHARGES.**

- 4.1. **Fees.** The fees for Your account shall be payable on a monthly basis on the first day of each month during the Initial Term and each Renewal Term of this Agreement. PLEX shall have the right to increase the fees for Your account at any time during the Term upon thirty (30) days' written notice to You. In the event that You do not agree with such fee increase, You shall have the right to terminate this Agreement upon thirty (30) days' written notice, provided that such notice of termination must be received within thirty (30) days of date of notice of the fee increase. If You terminate the Services prior to the twelve (12) month anniversary date of the Services first use, please note that You may be liable for Data Migration termination fees as described in 4.2 Data Migration below.
- 4.2. **Data Migration.** In some cases, PLEX may offer, and You may accept data migration services to move Your designated data from an existing hosting environment to the new hosting environment for the purpose of using the Services described herein ("Data Migration"). In such cases and upon commencement of the Services, You will receive an invoice calculated at the then prevailing Data Migration price per user for Data Migration with an associated one hundred percent (100%) discount. In the event You terminate the Services prior to the twelve (12) month anniversary of Your use, the one hundred percent (100%) discount associated with the invoice for Data Migration will be removed and the invoice will become due and payable upon the date you terminate the Services. After the twelve (12) month anniversary of Your use of the Services, the invoice for Data Migration will become null and void.
- 4.3. **Additional MANAGED DEVICES and MANAGED USERS.** In the event that You desire to add additional MANAGED DEVICES or MANAGED USERS to Your account, PLEX may increase charges to Your account for such MANAGED DEVICES and/or MANAGED USERS, as the case may be, including reasonable charges for increased overhead and profit and You agree to pay such increased charges as may be invoiced by PLEX on a monthly basis.
- 4.4. **Billing and Payment Arrangements.** PLEX will bill You on a monthly basis for all recurring fees. PLEX's payment preference is a credit card as described below. Additionally, and at PLEX's option, You may request payment by check or wire transfer. For payment by wire transfer, all wire transfer fees are the responsibility of You, the sender. One-time fees, including late payment fees, invoice processing fees, and returned check fees may occur at any time. All plan or feature changes may be billed within a seven (7) day period. No refunds or adjustment shall be issued for one-time fees. For recurring fees, no refund or adjustment for plan downgrades or elimination of plan features within the current monthly term shall be issued. INVOICES/PAYMENTS ARE IRREVOCABLY DEEMED FINAL AND ACCEPTED BY YOU THIRTY (30) DAYS FROM THE LATER OF WHEN (I) YOUR INVOICE IS ISSUED AND (II) YOU MAKE PAYMENT THEREOF (INCLUDING THROUGH YOUR CREDIT CARD AS AUTHORIZED HEREUNDER). YOU SHALL AT ALL TIMES PROVIDE AND KEEP CURRENT AND UP-TO-DATE YOUR CONTACT, CREDIT CARD, IF APPLICABLE, AND BILLING INFORMATION ON THE ADMINISTRATIVE CONTROL PANEL.
- 4.5. **Payment by Credit Card.**
- 4.5.1 For payment by credit card, PLEX shall provide an invoice to You. You may view and print the invoice for Your account using the Account Manager. At the beginning of each term, PLEX will apply the current monthly charges to Your credit card number which You entered into the Account Manager.
- 4.5.2 It is Your responsibility to keep Your credit card information up to date at all times. Deleting Your credit card information at any time may be considered grounds for immediate termination. In the event charges to Your credit card fail, PLEX shall email a warning to Your account billing contact. If, after ten (10) days, PLEX is unable to bill Your credit card, PLEX may suspend Your access to or terminate any Services. During suspension, existing data will not be

affected. After fifteen (15) days of non-payment from the date Your credit card was initially charged, PLEX shall have the right to immediately terminate this Agreement and delete all your Data as per the above.

4.5.3 In the event You issue a chargeback or reversal of charges without first following the procedures in Section 3, the You will be responsible for a Fifty Dollar (\$50.00) billing service fee.

4.6. **Excessive Use.** You shall monitor and maintain Your accounts within all plan-specified limits and in a manner that does not disrupt the activities of other PLEX customers. In the event Your usage exceeds the limits for Your account or may disrupt the activities of other PLEX customers, You agree PLEX may, in its sole discretion, (i) charge You for such excess usage via Your credit card, or by invoice, (ii) upgrade You to a plan or increase the limits on Your account to address this excess usage, and/or (iii) suspend or terminate Your account for cause. Usage and associated charges for excess usage shall be determined based solely upon PLEX's collected usage information. Unused monthly allotments shall not accrue or carry over from one month to any other month. Upon any upgrade or increase on the limits of Your Account, You shall be responsible for the new costs and fees.

4.7. **Taxes.** You shall be liable for taxes, governmental fees and assessments to be paid related to fees and charges arising under this Agreement or in connection with the Services. You shall also pay all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of the Services.

5. **MODIFICATION OF TERMS.** PLEX may update, amend, modify or supplement the terms and conditions of this Agreement from time to time by updating this Agreement on its website. You are responsible for regularly reviewing the most current version of this Agreement at any time at <http://www.plexhosted.com/legal>. If You continue to use the Services following any such amendment, modification or supplement, such use will be deemed acceptance of such update, amendment, modification or supplement by You. If at any time you do not agree with any amendment, modification or supplement to the terms and conditions of this Agreement, you may terminate this Agreement for convenience as per Section 3.2.

6. BETA PRODUCTS AND SERVICES.

6.1. **Provided "As Is."** This section applies only to customers with accounts created on experimental "Beta" plans and platforms. The Service Level Agreement does not apply to such "Beta" plans or platforms, and PLEX has no liability whatsoever in relation to any such "Beta" plans or platforms or any related databases, website content and email messages, whether direct or indirect or otherwise. Any use of "Beta" platforms or plans is at Your sole risk and you are strongly discouraged to use such accounts in production or in relation to sensitive data.

6.2. **Upgrades.** PLEX may upgrade software on "Beta" programs when and as PLEX deems necessary in its sole discretion. Without limitation, PLEX does not represent or warrant that new versions of the software installed on "Beta" programs will be compatible with the currently installed version or that loss of functionality or interruption of service will not occur as a result of such upgrades.

6.3. **Termination.** PLEX has the right to terminate any "Beta" program or plan at any time without cause or notice. PLEX may convert the "Beta" servers to a PLEX Services plan selected at PLEX's sole discretion. To discontinue the account and avoid incurring increased charges under selected PLEX Service plan, You must terminate the account in accordance with the termination provisions in Section 3 of this Agreement.

7. MATERIAL, DATA, SOFTWARE, OR PRODUCTS.

7.1. **Server Ready.** Any material, data, software or products You provide to PLEX in connection with PLEX Services shall be server ready, meaning that they shall be in a

condition and form, as determined solely by PLEX, which requires no additional manipulation or verification on the part of PLEX. Attempting to place or requesting placement of non-server-ready material, data, software or products on PLEX's servers shall be a material breach of this Agreement.

- 7.2. **Rejection.** PLEX may, in its sole discretion, reject material, data, software or products that You have placed, attempted to place, or have requested be placed on PLEX's servers. PLEX shall notify You of its rejection and provide You with an opportunity to amend or modify such material, data, software or products to meet the requirements of PLEX.
- 7.3. **Malicious Code.** Any material, data, software or products placed on PLEX's servers by or through You shall be free of any and all malicious code, including disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, computer viruses and mechanisms that may disable or negatively impact the servers.

8. LIMITED WARRANTY, LIMITATION OF DAMAGES.

- 8.1. PLEX PROVIDES SERVICES ON AN "AS IS", "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTIES, CONDITIONS OR REPRESENTATIONS ALL OF WHICH ARE DISCLAIMED, WAIVED AND EXCLUDED. YOU EXPRESSLY AGREE THAT ANY AND ALL USE OF SERVICES IS AT YOUR SOLE RISK AND EXPENSE. ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR LEGAL, WHETHER ARISING BY LAW, CONTRACT, STATUTE, USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR WHETHER ARISING AS RESULT OF THE NATURE OF THIS AGREEMENT OR IN CONFORMITY WITH USAGE, EQUITY OR LAW, OR OTHERWISE, INCLUDING ANY AND ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF TITLE, OWNERSHIP (INCLUDING BUT NOT LIMITED TO THE WARRANTY THAT THE RELEVANT PROPERTY IS FREE OF ANY OTHER RIGHTS OR CHARGES), NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, QUALITY AND WORKMANSHIP, ARE HEREBY DISCLAIMED, WAIVED AND EXCLUDED.
- 8.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, YOU AGREE THAT PLEX'S (AND THAT OF ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS) TOTAL MAXIMUM AGGREGATE CUMULATIVE LIABILITY, FOR ALL PAST, PRESENT OR FUTURE CLAIMS, DEMANDS, FINES, PENALTIES, ACTIONS, CAUSES OF ACTIONS, REQUESTS, LAWSUITS, JUDGMENTS, DAMAGES, LIABILITIES, COSTS, EXPENSES, PREJUDICES OR LOSSES, INCLUDING REASONABLE ATTORNEYS' FEES ("CLAIMS") ARISING AS A RESULT OF OR IN RELATION TO THIS AGREEMENT, SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES AND SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED, IN THE AGGREGATE FOR ALL CLAIMS BY ANY AND ALL PERSONS, ONE HUNDRED PERCENT (100%) OF ALL FEES ACTUALLY PAID TO PLEX BY YOU UNDER THIS AGREEMENT FOR THE ONE MONTH PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.
- 8.3. PLEX AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, VENDORS AND LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES FOR LOST PROFITS, GAINS OR OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE, REGARDLESS OF WHETHER PLEX HAS BEEN ADVISED OF SUCH DAMAGES OR THEIR POSSIBILITY.

- 8.4. You agree that Your recourses and remedies and PLEX's (and its SUBSIDIARIES', AFFILIATES', OFFICERS', EMPLOYEES', AGENTS', PARTNERS', MANDATARIES', VENDORS' AND LICENSORS') liability hereunder may be further limited by the Service Level Agreement.
- 8.5. You are fully responsible for the content of the information and data passing through PLEX's network or using the Services and for all activities that You conduct with the assistance of the Services.
9. **PATENTS, COPYRIGHTS, TRADEMARKS, AND OTHER INTELLECTUAL AND PROPRIETARY RIGHTS.**
- 9.1. Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any product or service provided to You is solely the property of PLEX and its vendors and licensors. These products and services are only for Your use in connection with the Services.
- 9.2. You hereby represent and warrant to PLEX 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 PLEX servers.
10. **HARDWARE, EQUIPMENT, AND SOFTWARE.** You are responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access the Services. PLEX makes no representations, warranties, or assurances that Your equipment will be compatible with PLEX services.
11. **INDEMNIFICATION.** You shall indemnify, defend and hold harmless PLEX (and its subsidiaries, affiliates, officers, employees, agents, partners, mandataries, vendors and licensors) of any and all Claims (including third party Claims) arising as a result of or in relation to (a) any breach of this Agreement (b) Your negligence or willful misconduct, or (c) in relation to any activities conducted by You through the Services, or otherwise in relation to Your products or services.
12. **MISCELLANEOUS.**
- 12.1. **Governing Law, Jurisdiction, Forum, Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, USA without regard to its conflicts of laws or its principles. The courts of the State of Georgia or the federal courts of the USA situated therein, as applicable, shall have sole and exclusive jurisdiction over any action, claim, demand, proceeding or lawsuit whatsoever arising under or in relation to this Agreement or its subject matter. The parties irrevocably agree, consent and submit themselves to the subject matter and personal jurisdiction of the courts of the State of Georgia and of the federal courts of the USA situated therein for such purposes. This choice of jurisdiction does not prevent either Party from seeking injunctive relief with respect to a violation, infringement or misappropriation of intellectual property rights or confidentiality obligations in any jurisdiction.
- 12.2. **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.
- 12.3. **Waiver.** No waiver by PLEX 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 PLEX, and then only to the extent set forth in such writing. We may modify or amend this Agreement, including the Service Level Agreement and the rates and fees, from time to time. Unless otherwise provided in this Agreement, all such modifications or amendments shall be effective immediately upon posting on the website. You may request a copy of the revised Agreement by emailing us at legal@plexhosted.com. YOUR CONTINUED USE OF YOUR ACCOUNT AND/OR THE SERVICES AFTER THE NOTICE PERIOD WILL BE CONCLUSIVELY DEEMED TO BE ACCEPTANCE BY YOU OF ANY SUCH MODIFICATIONS OR AMENDMENTS.

- 12.4. **Assignment.** Neither party may assign or transfer this Agreement or any rights or obligations hereunder, in whole or in part, except with the prior written consent of the other party, which shall not be unreasonably withheld; provided that PLEX may assign or transfer this Agreement, or any rights or obligations hereunder, in whole or in part: (i) to an affiliate of PLEX, (ii) in connection with a merger, reorganization or sale of all or a substantial all of the assets, equity or business of PLEX, or (iii) for financing, securitization or other similar purposes, which assignments and/or transfers shall operate as a novation and discharge of PLEX hereunder. A change of control of You shall be deemed to be an assignment and transfer hereunder and shall be governed by the requirements of this provision.
- 12.5. **Excused Performance.** Except for monetary obligations, this Agreement and Your obligations hereunder shall not be affected or impaired because PLEX is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of circumstances beyond PLEX's control (including failure of a part of the power grid, failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry) and PLEX's obligations under this Agreement shall be suspended and excused by any such events or circumstances for the period of such force majeure event.
- 12.6. **Survival.** Sections 8, 9, 11 and this Section 12 of this Agreement shall survive termination.
- 12.7. **Entire Agreement.** This Agreement constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and PLEX with respect to the Services. You understand and agree that PLEX and You intend to include, as sole third-party beneficiaries of this Agreement, PLEX's software vendors, with all rights and remedies available as if such vendors were a party to this Agreement.