



Virtual Server Agreement

THIS AGREEMENT (“Agreement”) is between you (“Client”) and One Click Technology Group, LLC (“OCTG”), an Ohio Limited Liabilities Company with principle address of P.O. Box 310 Twinsburg, OH 44087 as of the date in which you order a virtual server service, (“Effective Date.”)

WHEREAS: CLIENT desires to engage OCTG and OCTG desires to be engaged by CLIENT in accordance with the terms set forth below. CLIENT agrees that OCTG may amend the Agreement on its website and the effective date of any such Agreement at any time by posting the amended Agreement on its website and the effective date of any such amendment will be the date on which the amended Agreement is so posted.

WHEREAS: CLIENT agrees that OCTG may add, delete, modify, or otherwise change some or all of its Services at any time in its sole discretion.

WHEREAS: OCTG is a company engaged in the business of offering, among other things, internet services pursuant to virtual server plans as specified in this Agreement.

WHEREAS: Where CLIENT, by accepting the Agreement, represents and warrants that he/she is at least eighteen (18) years of age and is the authorized representative of the organization or entity that he/she purports to represent, and agrees to provide true, accurate, current and complete information about CLIENT as prompted in the account registration process.

NOW THEREFORE, CLIENT and OCTG hereby enter into this Agreement under the following terms and conditions and to perform this Agreement according to such terms and conditions:

1. Definitions

For the purpose of this Agreement, the following terms will have indicated meanings:

“*Hosting Provider*” means a company which supplies the means to allow you to share your website over the internet. A hosting provider provides the hardware, software, and the connection to the internet; essentially leasing its Web Servers, whether physical or virtual.

“*Internet*” means a collection of many networks worldwide which is commonly referred to in two ways: The internet (lowercase “i”) is any collection of separate physical networks, interconnected by a common protocol, to form a single logical network. The Internet (uppercase “I”) is the worldwide collection of interconnected networks, which grew out of the original ARPANET, that uses Internet Protocol (IP) to link the various physical networks into a single logical network.

“*Physical Server*” means the computer hardware, software, and operating system necessary to operate and support the Virtual Server in accordance with this Agreement.

“*Software*” means the all operating instructions, operating manuals, subsystems, subroutines, ideas, specifications, and descriptions of the Software as they exist and are available as a result of development or licensing of the Software.

“*Virtual Server*” means an isolated partition within a single physical server where one can run different operating systems simultaneously with various configurations of space and software.

“*Web Hosting*” means making a web-site available on the internet using the CLIENT’s registered domain name.

2. Services

Virtual Server: OCTG agrees to provide Client with, (i) space on one of OCTG's Servers, (Virtual Server) to host a site on the internet, (ii) a license to use some of OCTG's proprietary software (Software), and various other services to facilitate the creation and maintenance of the Website, herein after referred to as "Services" as more specifically set forth in the CLIENT's Plan and this Agreement. OCTG shall provide the Services so that the Web Site is accessible to third parties via the World Wide Web portion of the Internet as specified herein.

- Except as expressly provided herein, CLIENT agrees that OCTG is only responsible for providing the Services in CLIENT's Plan and this Agreement, and OCTG is not responsible for providing any other services or tasks.

Uptime: The CLIENT's Website is generally accessible to third parties via the internet with the exception of scheduled maintenance and required repairs, and except for any loss or interruption of Services due to causes beyond the reasonable control of OCTG, or which are not reasonably foreseeable by OCTG, including but not limited to interruption or failure of telecommunication or digital transmission links and internet slow-downs or failures. Please be guided by OCTG's Service Level Agreement, SLA, for further explanation of uptime acceptability.

Updates: As part of the Services, OCTG shall provide the Client with a system and the necessary software for the CLIENT to transmit to OCTG, any revisions, updates, deletions, enhancements, or modifications, herein after referred to as "Updates" to the virtual server. OCTG shall update the virtual server provided that the CLIENT is not in default of its payment obligations, such Updates are within the scope of this Agreement, and such Updates are considered reasonably prudent.

3. Obligations by the Client

CLIENT shall provide to OCTG all materials comprising the Website, including but not limited to, any images, audio clips, video clips or text, hereinafter referred to as "Client Content," which shall be in a correct format (as specified by OCTG). OCTG reserves the right, in its sole discretion, to exclude or remove from the Website any CLIENT Content for any of the following reasons:

- CLIENT Content is not ready to be deployed to the Virtual Server
- CGI Scripts or programs consume an unreasonable amount of Central Processing Unit usage or Random Access Memory
- OCTG has received a significant number of complaints regarding CLIENT's Failure to be reasonably accessible to CLIENT's customers or timely fill orders
- CLIENT has become subject of a Governmental Complaint or Investigation, OR
- Any other reason which may violate or infringe any law or third party rights or which may otherwise may potentially expose OCTG to civil or criminal liability or public ridicule, provided that such right shall not place an obligation on OCTG to monitor or exert editorial control over the Website.

CLIENT represents and warrants that:

- CLIENT has the power and authority to perform its obligations under this Agreement
- CLIENT has the requisite level of knowledge in the use of Internet Languages, protocols and software to utilize the Services provided by OCTG
- CLIENT has secured all required authorization(s) necessary for hypertext links to third party web sites
- CLIENT holds all necessary licenses from the required jurisdictions to engage in the advertising and sale of any goods and services which may be offered on the Website
- CLIENT Content does NOT and will NOT violate any applicable law, regulation or right of a third party, including without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, AND
- CLIENT owns the CLIENT Content or otherwise has the right to place the CLIENT Content on the Website.

CLIENT agrees to not utilize OCTG's Services for any activities that:

- Constitute or encourage a violation of any applicable law or regulation, including but not limited to the sale of illegal goods or the violation of export control or obscenity laws
- Defame, impersonate or invade the privacy of any third party or entity
- Infringe the rights of any third party, including but not limited to the intellectual property, business, contractual or fiduciary rights of others

- Involve the display, sale, distribution or creation of any pornographic, obscene or otherwise offensive goods, services, material or ideas or promote violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age
- Modify any OCTG copyright notices or scripts without obtaining OCTG's prior written consent
- Provide mirroring service for other Websites
- The primary purpose is non-http compatible file distribution, including but not limited to the following file types - .arj, .mp3, .exe, .tar, .rar, or .zip
- Are in any way connected with trolling, mailbombing, IRC Bots, Game-emulators, ROMs or the transmission of "junk mail," "spam," the unsolicited mass distribution of e-mail or with any unethical marketing practices.
 - *Please reference Termination Fees and Procedures for Client's Violations in the Below Sections*

Acceptable Usage of Virtual Servers: Client agrees to comply with all laws, rules, regulations, and OCTG's own Acceptable Usage Policy, as provided on OCTG's website. CLIENT acknowledges that it has read and understands the AUP and that CLIENT has an obligation to periodically review the AUP from time to time. In addition to those activities prohibited in the AUP, CLIENT agrees NOT to utilize the Services for any activities that are mentioned above in maintained in Section "3." In the event that any provisions contained in this Agreement conflicts with any terms, conditions or clauses contained in the AUP, the provisions of this Agreement shall govern.

Mailing Lists: OCTG permits clients to send mailings to subscribers of their own mailing list. Such mailings must have explicit instruction to the recipient on how to remove his/her name from the list, and all requests to do so must be honored immediately. CLIENT agrees not to send mailings to lists provided by an outside agency or individual. CLIENT further agrees not to provide mailing list services to others. Due to the nature of the Virtual Server, OCTG requests that all mailing list services be sent during the hours of 0100 – 0500 EST.

OCTG reserves the right to terminate a CLIENT's mailing program, whether provided by OCTG or not, immediately and without notification to CLIENT if said list causes a problem, in OCTG's sole discretion, with the e-mail services of other clients. OCTG also reserves the right to forbid a CLIENT from utilizing any mail-sending program that jeopardizes the mail services of other clients. Due to the consumption of the system resources and overloading of the e-mail server, OCTG forbids the use of Gossamer Links program by any of its Clients.

4. License and Proprietary Rights

During the term of this Agreement, OCTG, grants CLIENT a nontransferable, nonexclusive limited license to use the Software, in object code form only, solely for purposes of using the Services on the Virtual Server. To the extent such Software belongs to a third party, OCTG only grants such rights as it is able to under an agreement with the applicable third party.

- CLIENT may NOT use Webpages or parts of Webpages generated by means of the Software on any Server other than the Virtual Server.

Restrictions: CLIENT agrees that it will NOT, directly or indirectly (and it will not allow others to, or act on their behalf):

- Copy the Software, except as is necessary to install on Hardware and for internal, archival purposes. In the event Client makes any copies of the Software, Client shall reproduce all proprietary notices on such topics
- Reverse engineer, decompile, disassemble, modify or otherwise attempt to derive source code from the Software
- Sell, lease, license, transfer, give possession of, or sublicense the Software or the documentation to others
- Write or develop any derivative or other software programs, based, in whole or in part, upon the Software.

Proprietary Rights: CLIENT shall not have any right, title, or interest in the Virtual Server, Software, Hardware, documentation, or any copyrights, patents, trademarks, trade secrets and any other proprietary rights embodied or used in connection therewith, except for the limited license mentioned in above paragraphs.

Proprietary Rights of Client: As between CLIENT and OCTG, CLIENT Content shall remain the sole and exclusive property of the CLIENT, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights. CLIENT hereby grants to OCTG a non-exclusive, worldwide, royalty-free license for the term to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use CLIENT Content as necessary to render the Services to CLIENT under this Agreement. \

5. General

Assignment and Transfer: No parties may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of each party, which consent shall not be unreasonably withheld or delayed.

Independent Contractor: Nothing in this Agreement shall be construed to create an agency, joint venture, partnership, or other form of business association between CLIENT and CLIENT. Further, none of the provisions of this Agreement are intended to create, nor shall be deemed to create, any relationship between CLIENT and CLIENT other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective employees, shall be construed to be the agent, employer, or representative of the other.

Governing Law: This Agreement is entered into and shall be governed by the internal laws of the United States and the State of Ohio, but excluding the conflicts of laws and/or provisions of the United States and the State of Ohio. Any suit or proceeding arising out of or relating to this Agreement may be instituted and maintained in the state courts of Trumbull County, Ohio, or the eastern district courts located in Ohio. The parties hereby irrevocably consent to exclusive jurisdiction and venue in such courts, and the parties waive objection to the jurisdiction and venue being in such courts.

- a. This Governing Law is subject to Section 3.13 herein, and the procedure 3.13 must be completed before any lawsuit can be filed within the courts.

Confidentiality and Confidential Information: The party receiving any confidential and proprietary information of the other ("Confidential Information") from the other party shall treat all such Confidential Information which may be disclosed by the disclosing party as confidential commercial property and shall not use or disclose to others, except as provided by this Agreement, any Confidential Information which may heretofore or hereafter come within the knowledge of the receiving party in performing its duties hereunder. This limitation on disclosure shall extend to the substance of any discussions concerning the Confidential Information. The foregoing shall not prevent the receiving party (a) from making use of or disclosing to others information which the receiving party can show has become part of the public domain other than by acts or omissions of the receiving party; (b) which the receiving party can show has been furnished to him/her by third parties as a matter of right, without restriction on disclosure; (c) which the receiving party can show was in his/her possession prior to disclosure of the information from the disclosing party to the receiving party; or (d) which is required to be disclosed to a court of law or governmental agency as a matter of law. (In the event of the occurrence of a disclosure pursuant to subparagraph (d), the receiving party agrees to notify the disclosing party promptly of the disclosure and of the circumstances concerning the disclosure and agrees to take whatever legal steps are necessary to assist the disclosing party in protecting the Confidential Information.)

Assumption of risk: CLIENT assumes complete and total responsibility and risk for the use of the web site, web site information and its platform therein. It is solely the responsibility of CLIENT to evaluate the accuracy, completeness and usefulness of the web site, web site information and the platform therein. As such, CLIENT must implement procedures and safeguards to satisfy requirements for accuracy of data and other web site information and for backing up or reconstructing (external to redundant web site setup on OCTG's system) any potential lost data or information.

Non-waiver: The failure of either party to demand strict performance of the terms of this Agreement or to exercise any right conferred by this Agreement will not be construed as a waiver or relinquishment of its right to assert or rely on any such term or right in the future.

Severability: If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

Indemnification: OCTG shall not be liable for any cost or damage arising either directly or indirectly from any transaction involving the use of the website, web site information or platform therein, even if OCTG or its authorized representatives have been advised of the possibility of such loss or liability. OCTG's total liability to each party under this agreement for any cause whatsoever is limited to the amount actually paid by each party under this agreement for the services that give rise to such liability. OCTG shall in no event be liable for any consequential, incidental, indirect, exemplary, punitive, special or similar damages including, without limitation, loss of profits, loss of revenues, loss of data, or for cover and the like, even if OCTG has been advised of the likelihood of the occurrence of such damages.

Amendments: No amendment, modification or waiver of any term of this Agreement will be effective unless set forth in writing signed by OCTG and CLIENT.

Headings: Headings contained in this Agreement are inserted for convenience and will have no effect on the interpretation or construction of this Agreement.

Notices: OCTG may deliver notices to you under this Agreement by written communication delivered by certified or registered first class mail, or express courier to CLIENT's address as it appears on record based on your registration information furnished to OCTG under this Agreement. CLIENT may give notice to OCTG by letter delivered by certified or registered first class mail, or express courier, to the following address: **OCTG Technology Group, LLC – P.O. Box 310 Twinsburg, OH 44087.**

Force Majeure: No party will be responsible or liable for delay in the performance of their respective obligations under the Agreement due solely to circumstances beyond their control, including events of force majeure; provided, however, that the party experiencing the force majeure will exercise best efforts to attempt to overcome any force majeure impediment to its performance and will notify the other party in writing of the force majeure impediment and the efforts taken to overcome the force majeure impediment. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

Dispute Resolution: It is the intention of the Parties to make a good faith effort to resolve, without resort to arbitration, any Dispute (as defined below) according to the procedures set forth in this Section. A "Dispute" is any controversy or claim arising out of or relating to the Agreement or any breach, termination or invalidity hereof.

Procedure: CLIENT and OCTG's designated representatives will attempt to resolve all Disputes by negotiation. In the event a Dispute cannot be resolved promptly by CLIENT, and OCTG's representatives, each party will immediately designate a senior executive with authority to resolve the Dispute. The designated senior executives will promptly begin discussions in an effort to agree upon a resolution of the Dispute. If the senior executives do not agree upon a resolution of the Dispute within 10 days of the referral to them, either party may elect to abandon negotiations. If a Dispute cannot be resolved pursuant to the procedures outlined in this Section, the Parties will then proceed to arbitration.

Arbitration: All claims, demands, or disputes of any kind between the Parties arising under or related to this Agreement shall first be submitted to mediation before a single mediator selected by the Parties. If after thirty (30) days after such mediation has been initiated, the dispute has not been resolved to the satisfaction of both Parties, the Parties shall then submit the dispute to a non-binding arbitration conducted in the English language in Trumbull County, Ohio, under the rules of the American Arbitration Association. Each party shall select an arbitrator, after which the arbitrators selected by each party shall select a third arbitrator. Any award from the panel of arbitrators shall be confirmable in any court of competent jurisdiction and shall be entered as a judgment enforceable by the prevailing party. Any award from the panel of arbitrators shall include an award of reasonable attorney's fees and costs to the prevailing party.