

CARASOFT RIDER

Please review and approve the Carahsoft Rider ("Rider").

The Carahsoft Rider contains mandatory terms for all public sector contracts (i.e. GSA, SEWP, NASPO, Open Market orders, etc.). By signing this document, you agree to the incorporation of these terms into all purchase orders placed by Carahsoft on behalf of Public Sector Entities who buy through Carahsoft and/or Carahsoft's prime contractors.

These terms will take precedence over any conflicting terms in your Commercial Supplier Agreement (i.e. End User License Agreement, EULA, Master Service Agreement, or similar document) with Public Sector Entities. These terms will also take precedence over any conflicting terms contained within the Manufacturer Agreement (i.e. Channel Agreement, Distributor Agreement, Aggregator Agreement, Reseller Agreement, VAD Agreement, VAR agreement, or similar document) you may have in place with Carahsoft Technology Corp., if applicable. Lastly, these terms will take precedence over any conflicting terms in any Statement of Work (or similar document) you may have in place with Carahsoft Technology Corp.

A Public Sector Entity ("Licensee") is defined as one of the following:

- A member of the U.S. government's legislative, judicial or executive branches. This includes the department of defense, civilian agencies, intelligence agencies, independent agencies, special inspector general offices, and quasi-official agencies (i.e. National Gallery of Art, National Park Foundation, etc.).
- U.S. state or local government entity. This includes all applicable state agencies, counties, cities, municipalities, and similar entities within a state, the District of Columbia, or one of the territories of the United States.
- An Academic Institution is defined as an accredited institution, and must be organized and operated for educational purposes. The institution must receive funding (partial or full) from a federal, state, or local agency, and must meet one of the following criteria:
 - Public or private elementary, secondary, vocational school, correspondence school, junior college, university, post-graduate school such as a medical college, law school, or business school, management school board, school for disabled, scientific, research, or technical institutions accredited by U.S. Department of Education and State Board of Education, or, by associations recognized by U.S. Department of Education, including the district, regional, and State Administrative offices.
 - Administrative Offices or Board of Education for academic institutions as defined as:
 - A district, regional or state administrative office of public educational institution
 - Administrative entities organized and operated exclusively for private academic institutions
 - Other state or local government entities whose activities consist of administrative support or services for the advancement of public academic institutions.
 - Full-time or part-time faculty, staff, or, matriculated students in good academic standing at an accredited academic institution. Libraries associated with an accredited academic institution
 - Hospitals and teaching hospitals that are wholly owned and operated by an academic institution.
 - Higher Education Research laboratories that are associated with an academic institution, recognized by the U.S. Department of Education, and teach students as part of their research mission.

Manufacturer Name: FTP Today Inc

Signature: *Martin J. Horan*

Print Name: *Martin J. Horan*

Title: *President*

Date: *07/22/2020*

By signing above, I have read and agreed with all info regarding the RIDER.

Carahsoft Rider for Public Sector Agencies

- 1. Applicability.** The terms and conditions in the Manufacturer Agreement and Commercial Supplier Agreement are hereby incorporated by reference to the extent that they are consistent with applicable public sector law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's Agreements or Commercial Supplier Agreement are inconsistent with applicable public sector law (i.e. See FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders or contracts with Carahsoft.
- 2. Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Commercial Supplier Agreement must be signed by a duly warranted contracting officer, in writing. The same requirement applies to Commercial Supplier Agreement modifications affecting the rights of the parties. All terms and conditions intended to bind the Public Sector Entity must be included within the contract signed by the Public Sector Entity
- 3. Termination.** If a Public Sector Entity cancels or terminates its corresponding order with Carahsoft, Carahsoft's reseller partner or a higher tier prime or subcontractor, as applicable, then Carahsoft will have the right to cancel the related order with Manufacturer in the same manner as the cancellation or termination is presented by the Public Sector Entity. In such a cancellation event, Carahsoft will notify Manufacturer as soon as reasonably possible on the specific details of the order cancellation.

 - Carahsoft may request cancellation or termination of the Commercial Supplier Agreement and applicable Public Sector Entity purchase order on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions (or applicable dispute resolutions process) or if such remedy is otherwise ordered by applicable jurisdictional court.
- 4. Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109), Federal Tort Claims Act (28 U.S.C. §1346(b)), or applicable dispute resolution process.
- 5. Dispute Resolution and Venue.** Any disputes relating to the Commercial Supplier Agreement shall be resolved in accordance with the FAR, the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, or applicable dispute resolutions process.
- 6. Customer Indemnities.** All Commercial Supplier Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
- 7. Contractor Indemnities.** All Commercial Supplier Agreement clauses that (1) violate applicable judicial department's right (i.e. 28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- 8. Renewals.** All Manufacturer Agreement and Commercial Supplier Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban (or similar/applicable ban) on automatic renewal are hereby deemed to be deleted.

9. Future Fees or Penalties. All Commercial Supplier Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

10. Travel and Expenses. Out-of-pocket expenses identified in a quote, statement of work, professional services agreement (or similar agreement) must be submitted for payment no more than sixty (60) days after completion of Services or such payment may be denied. Manufacturer shall ensure that travel expenses are incurred in accordance with the limitations set forth in FAR 31.205-46. Manufacturer will provide budgetary estimates for all travel and expense fees on its quotes (or Statement of Works/Professional Service Agreements) to Carahsoft.

11. Limitation of Liability: Subject to the following:

- Public Sector Entity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Public Sector Entity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the Public Sector Entity's right to recover for fraud or crimes under applicable fraud statute, such as the False Claims Act, 31 U.S.C. §§ 3729-3733.

12. Public Access to Information. Manufacturer agrees that the Commercial Supplier Agreement contains no confidential or proprietary information and acknowledges the Commercial Supplier Agreement will be available to the public.

13. Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.



Terms of Service

These Terms and the associated order for the Services (the “Order”, and together with these Terms, the “Agreement”) govern your access to and use of the Services, which include the FTP Today website, the FTP Today Support website and the FTP Today hosted application services (all together, the “Services”). The Agreement is a legal contract between you (defined below) and FTP Today, Inc. (“FTP Today”, “we” or “us”), a Nevada Corporation.

You may use the Services only if you have the legal power and capacity to form a contract with FTP Today. If you are using the Services on behalf of an organization, you are agreeing to the Agreement on behalf of that organization and hereby represent that you have the authority to bind that organization to the Agreement. In that case, “you” and “your” will refer to that organization. FTP Today and you are each a “Party” to the Agreement and together are the “Parties”.

By using the Services, you agree to the Terms of the Agreement and you may use the Services only in accordance with the Agreement. The Services will continue to evolve as we refine features and functionality, and we may modify the Services, in general or with respect to you, from time-to-time without prior notice. We may delete any content or data from the Services to meet our regulatory obligations or to protect you, other FTP Today customers, and/or the Services. For example, we may delete virus-infected files.

Your Data & Your Users

The Services enable the transmission of your Data across the Internet between you and your Users, with temporary storage on the FTP Today platform incident to such Data transmissions. In order to use the Services it requires your authorized Users, defined herein as yourself, associates, employees, contractors, customers, partners or other representatives of yours who you have authorized to use the Services and who you have provided access to the Services via unique credentials under your account with FTP Today (your “Users”).

You and your Users retain full ownership of all of the files that you collectively upload to FTP Today or download from FTP Today (your “Data”). FTP Today does not claim any ownership over any of your Data. You acknowledge that we do not monitor the content of any of your Data in providing the Services and that we are not responsible for the accuracy, completeness, appropriateness, safety or legality of your Data or any other information or content you may be able to access using the Services.

Nothing in the Agreement will restrict FTP Today from collecting, using and analyzing general information from its customers (including you) in an aggregated manner for purposes of improving and enhancing the quality and nature of Services, or to market or publish general information and statistics, provided that we do not specifically identify you or disclose publicly any personally identifiable information in the course of collecting, using, analyzing, marketing or publishing that information or data. Additional information about what we do with your Data and how we collect and use other information relating to you and your use of the Services is explained in our [Privacy Policy](#). We reserve the right at all times to disclose any information if required by applicable law, regulation, legal process or governmental request.



Terms of Service

Sharing Your Data and Third-Party Products

The Services are specifically designed to allow you to share your Data with your Users or with others. If you choose to share your Data, we are not responsible for what those others do with your Data, so please carefully consider what you share and with whom you share it.

A Third-Party Product is any third party product, application, service, software, network, system, directory, website, database and/or information obtained separately by you which links to the Services, or which you may connect to or enable in conjunction with the Services, including, without limitation, Third-Party Products which may be integrated directly into the Services by you or at your direction. An example of a third-party product is a desktop application generally known as an “FTP Client” or an “SFTP Client”. If you or your Users choose to share your Data in any manner, including through a Third-Party Product or integration you are solely responsible for what that third party may do with your Data, and your relationship with that third party. Likewise, you are solely responsible for any of the effects a Third-Party Product may have on your Data, including deleting or corrupting your Data. You acknowledge that we are not responsible for the disclosure of your Data by you or your agents (including your Users) to any third parties or the effects of any Third-Party Product on your Data.

Your Responsibilities

Information and content accessible through the Services may be protected by intellectual property rights of others. Please do not copy, upload, download, or share any information or content unless you have the right to do so. You, not FTP Today, will be fully responsible and liable for what you copy, share, upload, download or otherwise use while using the Services. You must not upload spyware or any other malicious software to the Services or use the Services to spam others or to propagate spyware or any other malicious software.

You acknowledge that, as between you and FTP Today, FTP Today owns and retains all right, title and interest in the Intellectual Property Rights in the Services. You own and retain all right, title, and interest in the Intellectual Property Rights in your Data. “Intellectual Property Rights” means: (i) copyrights and other rights associated with works of authorship; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; and (v) all registrations, applications, renewals, extensions, continuations, divisions, or reissues now or in the future.

You, and not FTP Today, are responsible for maintaining and protecting all of your Data from loss or corruption. FTP Today will not be liable for any loss or corruption of your Data, or for any costs or expenses associated with backing up or restoring any of your Data, even though backup may be provided as a part of the Services for business continuity reasons.

You and your Users are responsible for keeping the passwords that you use to access the Services secure and you agree not to provide your password to any third party. You are responsible for all activity using your account, whether or not authorized by you. Accordingly, you should notify FTP Today immediately of any unauthorized use of your account. You acknowledge that if you wish to protect your Data when you are transmitting it to or from FTP Today, it is your responsibility to use a secure encrypted connection to do so.



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If any information related to your account changes, you must notify us promptly and keep your information current. The Services are not intended for use by you if you are under 18 years of age. By agreeing to these Terms, you are representing to us that you are over 18.

Our Responsibilities

In order to protect your Data, FTP Today will (i) implement and maintain security measures customary in the industry including without limitation, technical, physical, administrative and organizational controls; (ii) implement and maintain industry standard systems and procedures for detecting, preventing and responding to attacks or intrusion attempts; (iii) identify reasonably foreseeable internal and external risks to the security of your Data that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks (collectively, "Security Measures"); and (iv) designate an employee or employees to coordinate implementation and maintenance of its Security Measures.

If FTP Today knows that your Data has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this Agreement, we will alert you of any such data breach within two business days of discovery and will immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. We will provide you with all information necessary to enable you to fully understand the nature and scope of the data breach. To the extent that you, in your sole reasonable discretion, deem warranted, you may provide notice to any or all Users or other parties affected by any data breach. In such case, we will consult with you in a timely fashion regarding appropriate steps required to notify third parties. We will provide you with information about what we have done or plan to do to minimize any harmful effect or the unauthorized use or disclosure of, or access to, your Data.

Notwithstanding the above, the Parties recognize that certain controls provided to you as features of the Services are your responsibility to manage and must be configured by you in a manner that complies with your industry regulations and in accordance with your security risk analysis. Such controls that are your responsibility include, without limitation: encryption transmission controls; controls to restrict access by country; controls to restrict individual logins by IP address and by protocol; controls over password strength and expiration; controls to require multi-factor authentication for user logins; controls to configure folder access by user; controls to configure folder permissions per user (e.g., upload, download, delete and list permissions); controls to automatically purge files based on age since upload; and controls to suspend and delete users based on calendar date or time period of inactivity.

Non-disclosure of Confidential Information

During the Term of the Agreement and for a period of two (2) years thereafter (except for trade secrets, which shall be held in confidence for so long as they constitute trade secrets, and confidentiality obligations as required by applicable law), each Party (the "Receiving Party") that receives Confidential Information (as defined below) of the other Party (the "Disclosing Party") will not use, other than in connection with the provision or receipt of the Services, or disclose to anyone, other than officers, employees, contractors, or representatives of the



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Receiving Party with a need to know for purposes of the Agreement and who are subject to confidentiality obligations no less stringent than the terms of the Agreement ("Representatives"), any Confidential Information disclosed to the Receiving Party by or on behalf of the Disclosing Party. The Receiving Party will safeguard disclosure of such Confidential Information to the same extent that Receiving Party safeguards its own Confidential Information, but, in any case, will at a minimum use reasonable care. Upon request of the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party or destroy, certifying in writing to the Disclosing Party the destruction of such Confidential Information, the Disclosing Party's Confidential Information in its possession or under its control.

"Confidential Information" means all information, material and data of the Disclosing Party which (i) is labeled or designated in writing as confidential or proprietary, (ii) the Receiving Party is advised is proprietary or confidential, or (iii) in view of the nature of such information and/or the circumstances of its disclosure, the Receiving Party knows or reasonably should know is confidential or proprietary. Confidential Information includes, without limitation, the terms and conditions of the Agreement, the Services, your Data, and all information relating to the Disclosing Party's business plans, marketing plans, customers, technology, employee and organizational information, product designs, product plans and financial information.

These confidentiality obligations will not apply to any information which (i) is or becomes publicly known without any fault of or participation by the Receiving Party or its Representatives; (ii) was in Receiving Party's possession prior to the time it was received from Disclosing Party or came into Receiving Party's possession thereafter, in each case lawfully obtained from a source other than Disclosing Party or its Representatives and not subject to any obligation of confidentiality or restriction on use; (iii) is required to be disclosed by judicial, arbitral or governmental order or process or operation of law, in which event the Receiving Party will, unless prohibited by law, notify the Disclosing Party of the requirement of disclosure before making such disclosure and will comply with any protective order or other limitation on disclosure obtained by the Disclosing Party; or (iv) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

Export

You, your Users and your Data may be subject to the trade laws and regulations of the United States and other countries, including the Export Administration Regulations (EAR, 15 CFR Part 730 et seq.) and the sanctions programs administered by the Office of Foreign Assets Control (OFAC, 31 CFR Part 500).

You will not import, export, re-export, transfer or otherwise use the Services in violation of these laws and regulations, including by engaging in any unauthorized dealing involving (i) a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan and Syria), (ii) a party included on any restricted person list, such as the OFAC Specially Designated Nationals List, or the Commerce Department's Denied Persons List or Entity List, or (iii) the design, development, manufacture, or production of nuclear, missile, or chemical or biological weapons. By using the Services, you represent and warrant that you are not located in any such country or on any such list.



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You will not engage in activity that would cause FTP Today to be in violation of these laws and regulations, and will indemnify FTP Today for any fines, penalties or other liabilities incurred by FTP Today for your failure to comply with this provision.

The Services are located in the United States. FTP Today will not export or re-export any of your Data from the United States. All information received from you shall be handled in strict accordance with the U.S. export administration regulations, and FTP Today agrees to comply, and do all things necessary to cause its subcontractors to comply with all applicable federal, state, and local laws, including (but not limited to) the Regulations of the U.S. Department of Commerce, relating to the Export of Technical Data insofar as they relate to activities to be performed under the Agreement.

Feedback

While we appreciate it when users send us feedback, comments, and/or suggestions about our Services ("Feedback"), please be aware that we (or others we authorize) may use in any manner any feedback, comments, or suggestions you post in our forums or otherwise provide without any obligation to you. You agree that we (or others we authorize) may freely use, disclose, reproduce, license, distribute, or otherwise exploit in any manner any Feedback you post in our forums or otherwise provide to us about our Services without any obligation to you, restriction of any kind (including on account of any Intellectual Property Rights), and without paying any compensation to you or any third party.

Acceptable Use Policy

You are solely responsible for your conduct, the content of your Data and your communications with others while using the Services. You will not, and will not attempt to, use the Services to violate any laws or any rights of FTP Today or any other person or otherwise misuse or inappropriately use the Services, and you will use the Services only in a manner consistent with the [FTP Today Acceptable Use Policy](#), as may change from time to time in our discretion.

You agree to indemnify, defend and hold harmless FTP Today and its officers, directors, owners, employees, agents, consultants and vendors from and against any and all liabilities, losses, claims, damages, causes of action, costs and expenses (including reasonable attorneys' fees) that may be incurred by FTP Today arising out of or related to you or your Users' acts or omissions in connection with Services, whether such claims arise under contract, tort, statute or other legal theory.

Other Content

The Services may contain links to websites or resources of others. We do not endorse and are not responsible or liable for their accuracy, availability, content, products, services or anything else. You are solely responsible for your use of any such websites or resources. Also, if we provide you with any software under an open source license, there may be provisions in those licenses that conflict with the Agreement, in which case the open source provisions will apply with respect to the code to which those provisions apply.



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Billing

Unless otherwise agreed by the Parties, all fees will be due and payable upon commencement of the Services ("Service Fees"). If you fail to pay Service Fees within thirty (30) days of the date of each invoice, or if you do not update payment information upon request, we may suspend or terminate access to the Services by you or your Users.

You will pay all applicable sales, use, service, value-added, consumption or other taxes associated with the Services you purchase. FTP Today will pay all taxes on its income and all taxes and insurance associated with its personnel.

Payments made by credit card or debit card may be billed and processed by an agent on behalf of FTP Today. Such agent shall act solely as a billing and processing agent for and on behalf of FTP Today and shall not be construed to be providing the Service. If you mandate the use of any specific payment portal or other processing agent which charges a fee to FTP Today of any kind, you shall be invoiced the cost of such fee and obligated to pay it.

If you pay for the Services by credit card, you agree to keep a valid credit card and expiry date on file so that payments can be automatically processed. You agree that FTP Today may update your card details if and when necessary using the updater service provided to us by our payment gateway as part of the merchant banking system. If your card issuing bank does not allow the updater service to update your credit card details on our billing system, you agree to respond promptly to our requests for a manual update.

After the Initial Term, the Service Fees are subject to change and may be changed upon notice to you at least thirty (30) days prior to the start of any Renewal Term (as defined below).

Term and Termination; Suspension

The Agreement shall begin on the effective date as specified in your Order ("Order Effective Date") and shall continue as specified in your Order (the "Initial Term"), automatically renewing thereafter for successive periods of the same term (each a "Renewal Term" and together with the Initial Term, the "Term") unless earlier terminated. Either Party may terminate the autorenewal of the Agreement upon written notice to the other Party, which notice is given at least thirty (30) days prior to the end of the applicable then-current Initial Term or Renewal Term, as the case may be.

FTP Today reserves the right to suspend or terminate the Services in whole or part at any time, with or without cause, and with or without notice, without incurring liability of any kind. If FTP Today suspends or terminates your use, it will try to let you know in advance and help you retrieve your Data, though there may be some cases (for example, repeatedly or flagrantly violating the Agreement, a court order, or danger to other users) where we may suspend or terminate immediately. You acknowledge that if your access to the Services is suspended or terminated, you may no longer have access to your Data that is stored with the Service.



Terms of Service

Warranties and SLA

You warrant that you have the power, authority and right to enter into the Agreement and to observe and perform your respective obligations contained in the Agreement.

FTP Today warrants that: (i) it has the power, authority and right to enter into the Agreement and to observe and perform its respective obligations contained in the Agreement; (ii) it will comply with all applicable law, and be duly licensed and otherwise authorized to provide the Services; (iii) it will provide the Services in a professional manner, consistent with recognized industry security standards and good commercial practices in an effort to maintain the online availability of the Service for a minimum of availability 99.9% in any calendar (excluding maintenance outages, outages related to DoS/DDoS attacks, outages that result from technology managed by you or your Users, and Internet network outages outside the control of FTP Today or its data center partners).

Should FTP Today fail to meet a minimum availability of 99.9% in any calendar month, you may be eligible for a Service Level Availability ("SLA") warranty credit as provided in the chart below.

SLA	Warranty Credit Available
99.9% or greater	No credit. SLA is met.
99.89% - 95%	10% of monthly fee.
94.99% - 90%	25% of monthly fee.
Less than 90%	50% of monthly fee.

Warranty credits are not available based solely on monitoring provided by FTP Today or based on details provided to you by FTP Today in a post-incident report; you must provide your own incident analysis as to lack of 99.9% availability of the Services in order to request a warranty credit.

Your exclusive remedy and FTP Today's sole obligation for its failure to meet the above SLA will be for FTP Today to provide a credit to be applied to your next billing cycle; provided that you notify FTP Today of an SLA breach within 10 days of the end of that calendar month. However, should FTP Today fail to meet a 95% or greater SLA for three (3) consecutive months during any twelve (12) month billing cycle on your account, you may terminate the Agreement with no further obligation and you will receive a pro-rata refund for any amounts you have prepaid in advance.

WITH THE EXCEPTION OF THOSE EXPRESS WARRANTIES MADE IN THIS SECTION, TO THE MAXIMUM EXTENT PERMITTED BY LAW, FTP TODAY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, IN CONNECTION WITH THE SERVICES.



Terms of Service

Indemnification

Your indemnity to FTP Today: you will defend and hold us and our affiliates, owners, employees, officers, directors, agents, successors and assigns, harmless at your own expense, against any and all third party liability (including damages, recoveries, deficiencies, interest, penalties and reasonable legal fees), directly or indirectly arising from or in connection with: (i) your Data; (ii) your violation of any third party rights (including third party intellectual property rights or privacy rights); and (iii) your use of the Services in any way contrary to the Agreement.

Our indemnity to you: We will defend and hold you and your owners, employees, officers, directors, agents, successors and assigns, harmless at our own expense, against any and all third party liability (including damages, recoveries, deficiencies, interest, penalties and reasonable legal fees), directly or indirectly arising from or in connection with any third party claims that the Services infringe or misappropriate the intellectual property rights of a third party.

The Party seeking indemnification under the Agreement will: (i) give the indemnifying Party prompt written notice of the claim, (ii) tender to the indemnifying Party control of the defense and settlement of the claim, and (iii) cooperate with the indemnifying Party in defending or settling the claim. The indemnified Party will have the right to participate at its own expense in any indemnification action or related settlement negotiations using counsel of its own choice. Neither Party may consent to the entry of any judgment or enter into any settlement that adversely affects the rights or interests of the other Party without that Party's prior written consent, which may not be unreasonably withheld.

Limitation of Liability

EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS, EACH PARTY'S LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS ARISING OUT OF THE AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID BY YOU TO FTP TODAY DURING THE TWELVE MONTHS PRIOR TO WHEN THE LIABILITY ARISES. NOTWITHSTANDING THE FOREGOING, FTP TODAY'S LIABILITY TO YOU FOR DATA BREACH WILL NOT EXCEED TWO TIMES THE AMOUNT PAID BY YOU TO FTP TODAY DURING THE TWELVE MONTHS PRIOR TO WHEN THE LIABILITY ARISES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PURPOSE OF THIS PARAGRAPH IS TO PROVIDE FOR THE ALLOCATION OF RISK AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES PAID, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY THAN PROVIDED FOR HEREIN.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST REVENUES, PROFITS, OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NONPERFORMANCE OF THE AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.



Terms of Service

Support

FTP Today will provide you support for the Services under the terms of its [Customer Support Policy](#).

You are not disclosing your Data to FTP Today per this Agreement or through the use of the Services by you or your Users. However, you may request that FTP Today and its authorized personnel access your Data or account for the purposes of assisting you with any step of your account setup or any other troubleshooting. Neither FTP Today nor any of its employees will be liable in cases where this access exposes us to your private Data and content. By using FTP Today, you agree to permit FTP Today representatives access permissions only when circumstances necessitate it. We reserve the right to assist in these ways when needed and will keep information confidential as per our [Privacy Policy](#).

Modifications

FTP Today may revise these Terms from time to time and the most current version will always be posted on our website. FTP Today will notify you of any modifications via email to the email address associated with your account and/or by a notification when you sign in to use the Services or by some other method. Unless FTP Today has entered into a written version of the Agreement with you, executed by the Parties, by continuing to access or use the Services after revisions are posted on our website you are agreeing to be bound by the revised Terms. If you do not agree to the revised Terms, simply don't use the Services after the modifications are effective, in which case the modifications will not apply to you.

Miscellaneous Legal Terms

Neither Party will be liable for any delay or default in its performance of any obligation under the Agreement (other than a payment obligation) caused directly or indirectly by fire, flood, act of God, acts of government, an act or omission of civil or military authority of a state or nation, strike, lockout or other labor problem, inability to secure, delay in securing or shortage of, labor, materials, supplies, transportation or energy, failures of suppliers, or by war, riot, embargo or civil disturbance, breakdown, or destruction of plant or equipment arising from any cause whatsoever, or any cause or causes beyond such Party's reasonable control (collectively, "Force Majeure Events"). This provision will in no way impair either Party's right to terminate this Agreement.

The Agreement and the use of the Services will be governed by Nevada law except for its conflicts of laws principles. All claims arising out of or relating to the Agreement or the Services must be litigated exclusively in the federal or state courts of Nevada, and both Parties consent to venue and personal jurisdiction there.

Unless otherwise agreed to in writing and signed by the Parties, the Agreement constitutes the entire and exclusive agreement between you and FTP Today with respect to the Services, and supersede and replace any other agreements, terms and conditions applicable to the Services. FTP Today rejects any additional or conflicting terms referenced on your company's form-purchasing document or referenced on your purchase order.



Terms of Service

The Agreement creates no third-party beneficiary rights. FTP Today's failure to enforce a provision is not a waiver of its right to do so later. If a provision is found unenforceable the remaining provisions of the Agreement will remain in full effect and an enforceable term will be substituted to reflect our intent as closely as possible.

Either Party may assign its rights and obligations to any of its affiliates or subsidiaries, or to any successor in interest of any business or assets associated with the Services. Unless the Parties agree otherwise in writing, we may identify you as a customer in general listings of customers that we may make available on our website or in promotional or marketing materials.

Except as otherwise expressly set forth in the Agreement, all notices given to the Parties under the Agreement will be in writing and will be given by nationally recognized overnight courier service, certified mail (return receipt requested), email (with return receipt confirmation) or personal delivery, if to you at the address indicated on the applicable Order, and if to FTP Today at:

FTP Today, Inc.
Attn: Legal
410 South Rampart Blvd Suite 390
Las Vegas, NV 89145