

# Version2 LLC Hosting Agreement

Hello and thank you for entrusting Version2, LLC (“Version2,” “we,” “us,” or “our”) to provide you with professional information technology services. This Hosting Agreement (this “Agreement”) governs all hosting-related services that we facilitate and/or provide to you. Please read this document carefully and keep a copy for your records.

## SCOPE

- a) **Context.** Throughout this Agreement, references to “Client,” “you,” or “your” mean the entity who has accepted a quote, proposal, service order, or similar document (electronic or otherwise) from Version2. (In this Agreement we refer collectively to these type of documents as a “Quote,” although the actual title(s) or caption(s) of the service-related document might vary.)
- b) **Scope of Services.** This is a “master” agreement and, as such, the specific hosting service plan to which you subscribe is not listed in this Agreement. Instead, your hosting service plan as well as any hosting-related services that we facilitate or provide to you (collectively, “Hosting Services”) will be described in one or more Quotes. The scope of the Hosting Services is limited to those services expressly listed in the Quote(s); all other services, projects, and related matters are out-of-scope and will not be provided to you unless we expressly agree to do so in writing (collectively, “Out of Scope Services”). **Please read both the Quote and this Agreement before accepting the Quote.** If you have any questions about the Quote, your selected service plan, or this Agreement, please do not sign the Quote and, instead, contact us for more information.
- c) **Version.** Each Quote will be governed under the version of this Agreement that is in place when the Quote is accepted. For that reason, you should keep a copy of this document and make a note of the “last updated” date indicated below when you accept a Quote.
- d) **Conflicts.** The provisions of a Quote govern over conflicting or different terms contained in this Agreement—this allows us to craft solutions to meet your needs by making applicable changes in the Quote.
- e) **Third Party Providers/Services.** Some of the Hosting Services may be provided to you directly by our personnel, while other portions of the services may be provided to you by third party providers (who are often referred to in the industry as “upstream providers.”) In this Agreement, we refer to upstream providers as “Third Party Providers” and the services that are provided by Third Party Providers will be referred to as “Third Party Services.”
  - i. **Selection.** If we use Third Party Providers or facilitate Third Party Services, then we will select the providers and services that offer hosting-related services that are appropriate for your needs and we will facilitate the provision of those Third Party Services to you. Not all Third Party Services will be expressly identified in a Quote, and we reserve the right to change Third Party Providers and Third Part Services in our sole discretion if the change does not materially diminish the Hosting Services.
  - ii. **Reseller.** Third Party Services are resold to you; in other words, we do not provide those services to you directly. **For this reason, we are not and cannot be responsible for any defect, omission, or failure of any Third Party Service or any failure of any Third Party Provider to provide its services to you or to us.** Third Party Services are provided on an “as is” basis only. If an issue requiring remediation arises with a Third Party Service, then we will endeavor to provide a reasonable workaround or, if available, a “temporary fix” for the situation; however, we do not warrant or guarantee that any particular workaround or fix will be available or achieve any particular result, or that Third Party Services will run in an uninterrupted or error-free manner.
  - iii. **Price Increases.** We reserve the right to pass through to you any increases in the costs and/or fees charged by Third Party Providers for the Third Party Services (“Pass Through Increases”). Since we do not control Third Party Providers, we cannot predict whether such price increases will occur, however, should they occur, we will endeavor to provide you with as much advance notice as reasonably possible.

## IMPLEMENTATION

- a) **Authorized Contact(s).** We will be entitled to rely on any directions or consent provided by your personnel or representatives who you designate to provide such directions or consent (“Authorized Contacts”). If no Authorized Contact is identified in an applicable Quote or if a previously identified Authorized Contact is no longer available to us, then your Authorized Contact will be the person (i) who accepted the Quote, and/or (ii) who is generally designated by you during our relationship to provide us with direction or guidance. We will be entitled to rely upon directions and guidance from your Authorized Contact until we are affirmatively made aware of a change of status of the Authorized Contact. If your change is provided to us in writing (physical document or by email), then the change will be implemented within two (2) business days after the first business day on which we receive your change notice. If your change notice is provided to us

in person or by telephone (live calls only), the change will be implemented on the same business day in which the conversation takes place. Do not use a ticketing system or help desk request to notify us about the change of an Authorized Contact; similarly, do not leave a recorded message for us informing us of a change to your Authorized Contact. We reserve the right but not the obligation to delay the Hosting Services until we can confirm the Authorized Contact's authority within your organization.

- b) **Access.** You hereby grant to us and, if applicable, our designated Third Party Providers, the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access your IT environment solely as necessary to enable us or those providers, as applicable, to provide the Hosting Services to you. Depending on the Hosting Service, we may be required to install one or more software agents into the Environment through which such access may be enabled. It is your responsibility to secure, at your own cost and prior to the commencement of any Services, any necessary rights of entry, licenses (including software licenses), permits or other permissions necessary for Version2 or our Third Party Providers, as applicable, to provide the Hosting Services to you.
- c) **Resource/Load Balancing.** The bandwidth made available to you is shared and allocated among all of our customers. You must comply with all bandwidth and Version2-imposed limitations on the Hosting Services as established by Version2 from time to time. We reserve the right to load-balance applicable bandwidth to ensure that your activity will not restrict, inhibit, or diminish any other user's use of the bandwidth or create an unusually large burden on the bandwidth. We reserve the right to restrict your access to the Hosted Environment in the event that your activities create a disproportionate burden on our network or our Third Party Providers' networks (if applicable), or any other crucial resources reasonably needed to ensure the functionality, integrity, and/or security of the Hosting Services.
- d) **Response.** Unless otherwise stated in the Quote or in the service plan you select ("Service Plan"), we will respond to issues involving the Hosting Services during our normal business hours (currently Monday through Friday, 7 AM to 7 PM) as follows:
  - **Virtual desktop and virtual applications:** Within one (1) business hour after we receive notice of a service request or issue
  - **Offsite cloud storage (2nd or 3rd tier only):** On the next business day following the business day on which we are notified of a service request or issue

In no event will we or our designated Third Party Provider (if applicable) be responsible for delays in the provision of the Hosting Services during (i) those periods of time covered under the Transition Exception (defined below), or (ii) periods of delay caused by Scheduled Down Time, Client-Side Downtime, Vendor-Side Downtime (all defined below), or (iii) periods in which we are required to suspend the Hosting Services to protect the security or integrity of the Environment, our equipment or network, or the network of any applicable third Party Provider, or (iv) delays caused by a force majeure event.

- i. **Scheduled Downtime.** For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by us but which will not occur between the business hours of 8:00 AM and 5:00 PM Central Time, Monday through Friday without your authorization or unless exigent circumstances exist, during which time we will perform scheduled maintenance or adjustments to the hosted environment (if necessary). We will use our best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.
- ii. **Client-Side Downtime.** Client-Side Downtime means any delays or deficiencies in the provision of, or access to, the Hosting Services to the extent that such delays or deficiencies are caused by your actions or omissions. Client-Side Downtime also includes, but is not limited to, any period of time during which we or our designated Third Party Provider requires your participation, information, directions, or authorization from you but we or our designated Third Party Provider (as applicable) cannot reach your Authorized Contact(s).
- iii. **Vendor-Side Downtime.** We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Hosting Services to the extent that such delays or deficiencies are caused by Third Party Providers.
- iv. **Transition Exception.** You acknowledge and agree that for the first forty-five (45) days following the commencement date of the Hosting Services, as well as any period of time during which we are performing off-boarding-related services (e.g., assisting you in the transition of the Hosting Services to another provider, terminating a service, etc.), the response time commitments provided to you will not apply to us, it being understood that there may be unanticipated downtime or delays related to those activities (the "Transition Exception").

#### **BACKUP / DATA RETRIEVAL**

Data in the virtual desktop infrastructure and the virtually-hosted applications will be backed up daily after business hours and will be retained on a local storage device on a rolling thirty (30) day basis, and in a cloud-based storage area on a rolling three

(3) day basis (“Standard Backup Service”). Please note: The Standard Backup Service is intended to be used on a periodic basis as a basic file and data retrieval service only, and not as a comprehensive disaster recovery solution. If your business requires a comprehensive disaster recovery solution, then please speak to your technician to discuss available options. In addition to the provisions found elsewhere in this Agreement, the Standard Backup Service, as well as any advanced data backup and recovery solution provided or facilitated by us to you (collectively, “Backup & Recovery Solution” or “BRS”), will also be governed by the following provisions:

- Client understands and agrees that all data transmitted over the internet may be subject to malware and computer contaminants such as ransomware, worms and trojan horses, as well as attempts by unauthorized users, such as hackers, to access or damage Client’s data. Neither Version2 nor its designated affiliates will be responsible for the outcome or results of such activities.
- Data recovery time will depend various factors including the size and complexity of the data being backed up/restored, and the speed and reliability of Client’s internet connection.
- If data recovery will impact system stability and/or performance, we reserve the right to move the data restoration process to a scheduled maintenance window.
- Data recovery may be delayed until we can determine, to our reasonable satisfaction, that the location to which the data is to be restored can acquire or, if applicable, re-acquire the recovered data.
- We do not guarantee the recovery of backed up data in all circumstances, it being understood that data integrity can be impacted by many variables including communication errors, hardware failures, etc.

**SERVICE LEVELS**

We endeavor to provide 99.9% Hosting Service availability as measured over a calendar month (“Uptime”). If we fail to provide Uptime equal to or above 99.9% over any calendar month (less any maintenance time, force majeure events, or Client-Side Downtime (defined below), then we will issue you a credit for service described in the table below, excluding any fees for bandwidth, excess disk space, labor or other charges not included in your selected Service Plan.

<b>Service Availability</b>	<b>Credit (percentage of recurring monthly fee for Hosting Services)</b>
<b>99.9 to 100%</b>	<b>0%</b>
<b>98 to 99.8%</b>	<b>10%</b>
<b>95 to 97.9%</b>	<b>25%</b>
<b>90 to 94.9%</b>	<b>50%</b>
<b>89.9 or below</b>	<b>100%</b>

Customer shall not receive any credits under this Agreement in connection with any failure or deficiency of availability caused by or associated with:

- Circumstances beyond Version2’s reasonable control, including, but not limited to, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay by Internet Service Provider (ISP), virus attacks or hackers, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of this Agreement;
- Failure of access circuits of the Version2 network, unless such failure is caused solely by Version2
- Scheduled maintenance and emergency maintenance and upgrades;
- DNS issues outside the direct control of Version2
- Issues with FTP, POP or SMTP Customer access;
- False SLA breaches reported as a result of outages or errors of any Version2’s hosting measurement system;
- Customer’s acts or omissions (or acts or omissions of others engaged or authorized by Customer) including, but not limited to, custom scripting or coding, any negligence, willful misconduct or use of the Services in breach of Version2’s Acceptable Use Policy;
- E-Mail or webmail delivery and transmission;
- DNS (Domain Name Server) Propagation; and
- Outages elsewhere on the Internet that hinder access to your account. Version2 is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Version2 will guarantee only those areas considered under the control of Version2’s server links to the Internet, Version2’s routers and servers.

## FEES; PAYMENT

- a) **Fees.** You agree to pay the fees, costs, and expenses charged by us for the Hosting Services as described in each Quote. You are responsible for sales tax and any other taxes or governmental fees associated with the Hosting Services. If you qualify for a tax exemption, you must provide us with a valid certificate of exemption or other appropriate proof of exemption. You are also responsible for all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes).
- b) **Schedule.** Unless otherwise indicated in a Quote, fees are invoiced after the month in which the Hosting Services are provided to you. Generally, all fees anticipate automatic monthly recurring payment by you, and payments by any other methods may result in increased fees or costs.
- c) **Nonpayment.** Fees that remain unpaid for more than sixty (60) days when due will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1% per month or the maximum allowable rate of interest permitted by applicable law. We reserve the right, but not the obligation, to suspend part or all of the Hosting Services without prior notice to you in the event that any portion of undisputed fees are not timely paid. Monthly or recurring charges (if applicable) will continue to accrue during any period of suspension. Notice of disputes related to fees must be received by us within sixty (60) days after the applicable Service is rendered or the date on which you pay an invoice, whichever is later; otherwise, you waive your right to dispute the fee thereafter. We reserve the right to charge a reasonable reconnect fee (of no more than 10% of your monthly recurring fees) if we suspend the Hosting Services due to your nonpayment.
- d) **Increases.** In addition, we reserve the right to increase our monthly recurring fees; provided, however, if an increase is more than five percent (5%) of the fees charged for the Hosting Services in the prior calendar year, then you will be provided with a sixty (60) day opportunity to terminate the Hosting Services by providing us with written notice of termination. You will be responsible for the payment of all fees that accrue up to the termination date and all pre-approved, non-mitigatable expenses that we incurred in our provision of the Hosting Services through the date of termination. Your continued acceptance or use of the Hosting Services after this sixty (60) day period will indicate your acceptance of the increased fees. In addition to the foregoing, we reserve the right to pass through to you any increases in the costs and/or fees charged Third Party Providers for the Third Party Services ("Pass Through Increases"). Since we do not control third party providers, we cannot predict whether such price increases will occur, however, should they occur, we will endeavor to provide you with as much advance notice as reasonably possible. Pass Through Increases, by themselves, will not trigger the 60-day termination option described above.

## LIMITED WARRANTIES; LIMITATIONS OF LIABILITY

- a) **Liability Limitations.** This paragraph limits the liabilities arising from the Hosting Services and is a bargained-for and material part of our business relationship with you. You acknowledge and agree that Version2 would not provide any Services, or enter into any Quote or this Agreement, unless Version2 could rely on the limitations described in this paragraph. In no event will either party be liable for any indirect, special, exemplary, consequential, or punitive damages, such as lost revenue, loss of profits (except for fees due and owing to Version2), savings, or other indirect or contingent event-based economic loss arising out of or in connection with the Hosting Services, this Agreement, any Quote, or for any breach hereof or for any damages caused by any delay in furnishing Hosting Services under this Agreement or any Quote, even if a party has been advised of the possibility of such damages; however, reasonable attorneys' fees awarded to a prevailing party (as described below), your indemnification obligations, and any amounts due and payable pursuant to the non-solicitation provision of this Agreement shall not be limited by the foregoing limitation. Except for the foregoing exceptions, a responsible party's ("Responsible Party's") aggregate liability to the other party ("Aggrieved Party") for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, "Claims"), whether in contract, tort, indemnification, or negligence, shall be limited solely to the amount of the Aggrieved Party's actual and direct damages, not to exceed the amount of fees paid by you (excluding hard costs for licenses, hardware, etc.) to Version2 for the Hosting Services during the three (3) month period immediately prior to the date on which the cause of action accrued or \$10,000, whichever is greater. The foregoing limitations shall apply even if the remedies listed in this Agreement fail of their essential purpose; however, the limitations shall not apply to the extent that the Claims are caused by a Responsible Party's willful or intentional misconduct or gross negligence. Similarly, a Responsible Party's liability obligation shall be reduced to the extent that a Claim is caused by, or the result of, the Aggrieved Party's willful or intentional misconduct, gross negligence, or to the extent that the Aggrieved Party failed to reasonably mitigate (or attempt to mitigate, as applicable) the Claims. Under no circumstances shall Version2 have any liability for any claims or causes of action arising from or related to Out of Scope Services.

- b) **Limited Warranty.** Unless otherwise expressly stated in a Quote or this Agreement, the Hosting Services are provided “as is” with no implied warranties (including any warranties or merchantability or fitness for a particular purpose) whatsoever. We do not warrant or guarantee that the Hosting Services will operate in an uninterrupted or error-free manner, or that the Hosting Services will be available to you without interruption or delay. The exclusive remedies for the interruption or unavailability of the Hosting Services will be those remedies listed in “Service Levels” section above, or the “Term; Termination” section below.

#### **INDEMNIFICATION**

Each party (an “Indemnifying Party”) agrees to indemnify, defend, and hold the other party (an “Indemnified Party”) harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys’ fees, (collectively, “Damages”) that arise from, or are related to, the Indemnifying Party’s breach of this Agreement. The Indemnified Party will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. The Indemnifying Party shall be permitted to have counsel of its choosing participate in the defense of the applicable claim(s); however, (i) such counsel shall be retained at the Indemnifying Party’s sole cost, and (ii) the Indemnified Party’s counsel shall be the ultimate determiner of the strategy and defense of the claim(s) for which indemnity is provided. No claim for which indemnity is sought by an Indemnified Party will be settled without the Indemnifying Party’s prior written consent, which shall not be unreasonably delayed or withheld.

#### **TERM; TERMINATION**

There are several dates about which you should be aware, including the effective/termination dates of this Agreement and the effective/termination dates of the Hosting Services under a Quote.

- a) **This Agreement.** This Agreement applies to all Hosting Services and is effective as of the date on which we provide a service to you or on the date on which you accept a Quote, whichever is earlier (“Effective Date”). This Agreement will terminate automatically after the last date on which Hosting Services are provided to you, however, the termination of this Agreement shall not change or eliminate any fees that accrued and/or were payable to us prior to the date of termination, all of which shall be paid by you. **Please note, this Agreement shall not be terminated by either party without cause if Hosting Services are in progress under a Quote.**
- b) **Quotes.** The term of the Hosting Services will be as indicated in the applicable Quote. If multiple Quotes exists between you and us, then the termination of Hosting Services under one Quote shall not, by itself, cause the termination of (or otherwise impact) this Agreement or any Quote. **Please note, a Quote may provide for auto-renewal of the Hosting Services; please review your Quote carefully.**
- c) **Termination Without Cause.** Unless otherwise indicated in the Quote or otherwise permitted under this Agreement, no party will terminate the Hosting Services prior to the Quote’s natural (*i.e.*, specified) expiration or termination date. (By way of example: If a Quote provides for an annual service, then the Hosting Services under that Quote cannot be terminated without cause prior to the expiration of one year). If you terminate the Hosting Services under a Quote without cause and without Version2’s consent, then you agree to be responsible for paying the termination fee described in the “Termination for Cause” section, below.
- a) **Termination For Cause.** In the event that one party (a “Defaulting Party”) commits a material breach under a Quote or under this Agreement, the non-Defaulting Party will have the right, but not the obligation, to terminate immediately the Hosting Services under the relevant Quote (a “For Cause” termination) provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within twenty (20) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party.
- i) **Remedies for Early Termination.** If Version2 terminates a Quote For Cause, or if you terminate any Hosting Services under a Quote without cause prior to such Quote’s expiration date, then Version2 shall be entitled to receive, and you hereby agree to pay to us, all amounts that would have been paid to Version2 had this Agreement or Quote (as applicable) remained in full effect, calculated using the fees and costs in effect as of the date of termination (“Termination Fee”). If you terminate this Agreement or a Quote For Cause, then you will be responsible for paying only for those Hosting Services that were delivered properly and accepted by you up to the effective date of termination, and nothing more.
- b) **Client Activity as a Basis for Termination.** If you or any of your staff, personnel, contractors, or representatives engages in any unacceptable act or behavior that renders it impracticable, imprudent, or unreasonable to provide the Hosting Services to you, then in addition to Version2’s other rights under this Agreement, Version2 will have the right upon providing you with ten (10) days prior written notice, to terminate the applicable Quote For Cause.
- c) **Consent.** You and we may mutually consent, in writing, to terminate a Quote at any time.

- d) **Transition; Deletion of Data.** If you request our assistance to transition away from our services, we will provide such assistance if (i) all fees due and owing to us are paid to us in full prior to Version2 providing its assistance to you, and (ii) you agree to pay our then-current hourly rate for such assistance, with up-front amounts to be paid to us as we may require. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. You also understand and agree that any software configurations that we custom create or program for you are our proprietary information and shall not be disclosed to you under any circumstances. **Unless otherwise expressly stated in a Quote or prohibited by applicable law, neither we nor our Third Party Providers will have any obligation to store or maintain any Client data in our/their possession or control following the termination of the Hosting Services.**
- e) **Declined Credit Card Fees.** If Customer's credit card is declined Customer's account will be assessed a \$25.00 Service Charge. Customer will be notified by e-mail at the e-mail address we have on file for the billing contact for their account that their card has been declined and will be given twenty-four (24) hours to bring your account current. If after twenty-four (24) hours we have had no response from Customer and payment has not been received, all web, database and e-mail services will be suspended until payment is received. In addition to the Service Charge for the declined credit card Customer will be charged an additional \$45.00 reactivation fee in order to have your service restored.
- f) **Credit Card Charge Backs.** Customer agrees that they will not use a credit card chargeback to resolve any billing dispute between them, the credit card holder and Version2. In the event that there is a billing dispute that cannot be amicably resolved, Customer agrees to submit to a third party arbitrator to resolve the dispute as outlined the Service Level Agreement. Customer agrees that any charge back made to their credit card, short of their credit card having been stolen by a third party and used to pay for hosting services, will be resolved in favor of Version2.

#### **CONFIDENTIALITY**

- a) **Defined.** For the purposes of this Agreement, Confidential Information means all non-public information provided by one party ("Discloser") to the other party ("Recipient"), including but not limited to customer-related data, customer lists, internal documents, internal communications, proprietary reports and methodologies, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of the Recipient, (ii) was developed independently by the Recipient, or (iii) is or was lawfully and independently provided to the Recipient prior to disclosure by the Discloser, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.
- b) **Use.** The Recipient will keep the Confidential Information it receives fully confidential and will not use or disclose such information to any third party for any purpose except (i) as expressly authorized by the Discloser in writing, or (ii) as needed to fulfill its obligations under this Agreement, or (iii) as required by any law, rule, or industry-related regulation.
- c) **Due Care.** The Recipient will exercise the same degree of care with respect to the Confidential Information it receives from the Discloser as it normally takes to safeguard and preserve its own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.
- d) **Compelled Disclosure.** If a Recipient is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, and provided that it is not prohibited by law from doing so, that Recipient will immediately notify the Discloser in writing of such requirement so that the Recipient may seek a protective order or other appropriate remedy and/or waive the Discloser's compliance with the provisions of this Section. The Recipient will use its best efforts, as directed by the Discloser and at the Discloser's expense, to obtain or assist the Recipient in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, the Recipient may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that the Recipient has been advised, by written opinion from its counsel (which shall be shared with the Discloser), that the Recipient is legally compelled to disclose.
- e) **Additional NDA.** In our provision of the Hosting Services, you and we may be required to enter into one or more additional nondisclosure agreements (each an "NDA") for the protection of a third party's Confidential Information. In that event, the terms of the NDA will be read in conjunction with the terms of the confidentiality provisions of this Agreement, and the terms that protect confidentiality most stringently shall govern the use and destruction of the relevant Confidential Information. If in the normal provision of the Hosting Services we are in receipt of or otherwise have access to personal health information (as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")), we will be your business associate (as that term is defined under HIPAA), and will comply with the terms of the Business Associate addendum, attached.

#### **OWNERSHIP**

Each party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights and other intellectual property owned by such party (“Intellectual Property”), and nothing in this Agreement or any Quote conveys or grants any ownership rights or goodwill in one party’s Intellectual Property to the other party. For the purposes of clarity, you understand and agree that we own any software, codes, algorithms, or other works of authorship that we create while providing the Hosting Services to you. If we provide licenses to you for third party software, then you understand and agree that such software is licensed, and not sold, to you, and your use of that software is subject to the terms and conditions of (i) this Agreement, (ii) the applicable Quote, (iii) written directions supplied to you by us, and (iv) any applicable EULA; no other uses of such third party software are permitted. To the maximum extent permitted by applicable law, we make no warranty or representation, either expressed or implied, with respect to third party software or its quality, performance, merchantability, or fitness for a particular purpose.

#### **SECURITY**

We maintain and will require any Third Party Provider that we use in the provision of the Hosting Services to maintain, administrative, physical, and technical safeguards in connection with the Hosting Services that are no less rigorous than accepted industry practices for information security. We maintain safeguards and will also require any applicable Third Party Providers to maintain safeguards, to ensure that the way in which Client data is collected, accessed, used, stored, processed, and disposed by the Hosting Services, comply with applicable export control laws, data protection and privacy laws.

Client is solely responsible for ensuring that its login information is utilized only by Client and Client’s authorized users and agents. Client’s responsibility includes ensuring the secrecy and strength of user identifications and passwords. Version2 shall have no liability resulting from the unauthorized use of Client’s login information. If login information is lost, stolen, or used by unauthorized parties or if Client believes that any hosted applications or hosted data has been accessed by unauthorized parties, it is Client’s responsibility to notify Version2 immediately to request the login information be reset or unauthorized access otherwise be prevented. Version2 will use commercially reasonable efforts to implement such requests as soon as practicable after receipt of notice.

#### **ARBITRATION**

Except for undisputed collections actions to recover fees due to us (“Collections”), any dispute, claim or controversy arising from or related to this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be settled by arbitration before one arbitrator who is mutually agreed upon by the parties. However, if a claim has been made or is anticipated to be made by a third party relating to these services and that third party does not agree to arbitration, Version2 can elect not to arbitrate so that all claims may be decided in one forum. The arbitration shall be administered and conducted by the American Arbitration Association (the “AAA”) or if there is no AAA -certified arbitrator available within a twenty (20) mile radius of our office, then by any arbitration forum as determined by us, pursuant to the selected forum’s arbitration rules for commercial disputes (the “Rules”). In the event of any inconsistency between the Rules and the procedures set forth in this paragraph, the procedures set forth in this paragraph will control. The arbitrator will be experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, the arbitration venue shall select the arbitrator. The arbitration shall take place in our office unless we agree to a different venue. The arbitrator will determine the scope of discovery in the matter; however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. Initially, the cost of the arbitration shall be split evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs.

#### **MISCELLANEOUS**

- a) **Acceptable Use Policy.** Your use of the Hosting Services must, at all times, comport with the provisions of our Acceptable Use Policy (“AUP”), a copy of which is attached to the end of this Agreement. We reserve the right to update our AUP as we deem reasonably necessary to ensure the continued, functionality, security, and integrity of our network and the Hosting Services. Any breach of our AUP will be deemed to be a material breach of this Agreement, and repeated breaches of our AUP will be deemed to be an incurable material breach.
- b) **End User Agreements.** Portions of the Hosting Services may require you to accept the terms of one or more third party end user license agreements, third party customer agreements and/or third party subscription agreements (collectively, “End User Agreements”). If the acceptance of an End User Agreement is required in order for you to receive any Services, then you hereby grant us permission to accept the applicable agreement(s) on your behalf. End User Agreements may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. **You agree**

**to be bound by the terms of all applicable End User Agreements.** If, while providing the Hosting Services, you or we are required to comply with an End User Agreement and that agreement is modified or amended, we reserve the right to modify or amend any applicable Quote with you to ensure your and our continued compliance with the terms of the applicable End User Agreement.

- c) **Compliance.** Unless otherwise expressly stated in a Quote, the Hosting Services are not intended, and will not be used, to bring Client into full regulatory compliance with any rule, regulation, or requirement that may be applicable to Client's business or operations. Depending on the Hosting Services provided, the Hosting Services may aid Client's efforts to fulfill regulatory compliance; however, the Hosting Services are not (and should not be used as) a compliance solution.
- d) **No Fiduciary.** The scope of our relationship with you is limited to the specific Hosting Services provided to you; no other relationship, fiduciary or otherwise, exists or will exist between us. If, by operation of law, a fiduciary relationship is imposed or presumed for out-of-scope services, you hereby waive that relationship and any fiduciary obligations thereunder.
- e) **Collections.** If we are required to send your account to Collections or to start any Collections-related action to recover undisputed fees, we will be entitled to recover all costs and fees we incur in the Collections process including but not limited to reasonable attorneys' fees and costs.
- f) **Assignment.** Neither this Agreement nor any Quote may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, we may assign our rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of our business or any other transaction in which ownership of more than fifty percent (50%) of our voting securities are transferred; provided, however, that the assignee expressly assumes our obligations hereunder.
- g) **Amendment.** This Agreement and any Quote may be amended only by a written document (email or similar electronic documents are sufficient for this purpose) that is initiated by us, and that specifically refers to this Agreement or the Quote being amended and is affirmatively accepted in writing (email or electronic signature is acceptable) by you.
- e) **Time Limitations.** The parties mutually agree that, unless otherwise prohibited by law, any action for any matter arising out of or related to the Hosting Services (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred.
- f) **Severability.** If any provision in this Agreement or any Quote is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions will be valid and enforceable to the fullest extent permitted by applicable law.
- g) **Other Terms.** We will not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication supplied by you unless we have expressly acknowledged the other terms and, thereafter, expressly and specifically accepted such other terms in writing.
- h) **No Waiver.** The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.
- i) **Merger.** This Agreement coupled with the Quote sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Hosting Services; however, any payment obligations that you have or may have incurred under any prior superseded agreement are not nullified by this Agreement and remain in full force and effect. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. We will not be bound by any of our agents' or employees' representations, promises or inducements unless they are explicitly set forth in this Agreement or in a Quote. **Our website and marketing materials are provided to you for illustrative or educational purposes only and are not intended (and will not be interpreted as) creating additional duties, requirements, service levels, or promises or guarantees of specific services or specific service results.**
- j) **Force Majeure.** Neither party will be liable to the other party for delays or failures to perform its obligations because of circumstances beyond such party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by the other party, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, acts of war, strike, failure of public utilities, terrorism or general civil insurrection, government and competent authorities orders, failure of supplies, embargoes and trade limitations, changes in law or regulation, epidemics, pandemics or outbreak of communicable disease, quarantines, national or regional emergencies, cyberwarfare, cyberterrorism, or hacking,

malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God (such as floods, storms, fires and earthquakes).

- k) **Survival.** The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive. If any provision in this Agreement is deemed unenforceable by operation of law, then that provision shall be excised from this Agreement and the balance of this Agreement shall be enforced in full.
- l) **Governing Law; Venue.** This Agreement will be governed by, and construed according to, the laws of the state of Illinois. You hereby irrevocably consent to the exclusive jurisdiction and venue of Will County, Illinois, for all non-arbitrable claims and causes of action with us that arise from or relate to this Agreement.
- m) **No Third Party Beneficiaries.** The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.
- n) **Usage in Trade.** It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this Agreement will be used to modify, interpret, or supplement in any manner the terms of this Agreement.
- o) **Notices; Writing Requirement.** Where notice is required to be provided to a party under this Agreement, such notice may be sent by postal mail, overnight courier, or email as follows: notice will be deemed delivered three (3) business days after being deposited in postal mail, first class mail, certified or return receipt requested, postage prepaid, or one (1) day following delivery when sent by FedEx, DHL, or other overnight courier, or one (1) day after notice is delivered by email. Notice sent by email will be sufficient only if the message is sent to the last known email address of the recipient or such other email address that is expressly designated by the recipient for the receipt of legal notices. All electronic documents and communications between the parties, including email, will satisfy any "writing" requirement under this Agreement.
- p) **Independent Contractor.** Version2 is an independent contractor, and is not your employer, employee, partner, or affiliate.
- q) **Data & Service Access.** Some of the Hosting Services may be provided by persons outside of the United States and/or your data may occasionally be accessed, viewed, or stored on secure servers located outside of the United States. You agree to notify us if your company requires us to modify these standard service provisions, in which case additional (and potentially significant) costs will apply.
- r) **Counterparts.** The parties intend to sign, accept and/or deliver any Quote, this Agreement, or any amendment in any number of counterparts, and each of which will be deemed an original and all of which, when taken together, will be deemed to be one agreement. Each party may sign, accept, and/or deliver any Quote, this Agreement, or any amendment electronically (e.g., by digital signature and/or electronic reproduction of a handwritten signature) or by reference (as applicable).

## **ACCEPTABLE USE POLICY**

We do not routinely monitor the activity of hosted accounts except to measure system utilization and for billing-related purposes; however, we reserve the right to do so at any time to ensure your compliance with the terms of this Acceptable Use Policy (this "AUP") and to help monitor and ensure the safety, integrity, and security of our hosting services (the "Services").

Similarly, we do not exercise editorial control over the content of any information or data created or accessible over or through the Services. Instead, we prefer to advise our customers of inappropriate behavior and any necessary corrective action. If, however, an account is used in violation of this AUP, we reserve the right to suspend your access to the Services without prior notice. Our failure to enforce this policy, for whatever reason, shall not be construed as a waiver of our right to do so at any time.

### **OVERVIEW**

Version2's intentions for publishing an Acceptable Use Policy are not to impose restrictions that are contrary to Customer's established culture of openness, trust and integrity. Version2 is committed to protecting Customer's employees, partners and the company from illegal or damaging actions by individuals, either knowingly or unknowingly.

The Version2 Acceptable Use Policy (the "AUP") governs the general policies and procedures for use of Services. The AUP may be updated from time to time through written notification and within five (5) business days of updating the AUP.

### **GENERAL**

Customer is expected to use our services with respect, courtesy, and responsibility, giving due regard to the rights of other users, our employees, representatives, and agents. Customer is expected to have a basic knowledge of how Microsoft Windows applications operate, how email applications operate, the types of uses which are generally acceptable for the product in which they are using, and the types of uses which are to be avoided. Use common sense and good judgment with regards to what is considered acceptable use. When in doubt, Customer is expected to contact a representative of Version2 for guidance and clarification.

This AUP defines the actions which Version2 considers to be abusive, and thus, strictly prohibited. Verbal abuse directed toward any Version2 employee is strictly prohibited and will not be tolerated. Termination of your account without refund may be a remedy chosen for reports of verbal abuse toward our employees.

Customer will not post, publish or disclose private e-mail correspondence to or from our company, its representatives, employees or agents to any other party, either public or private, without the express written consent of an officer of Version2.

### **RESTRICTED USE**

Version2 does not provide services to, or permit services to be used by, any country, entity, party or individual listed by The United States Department of Treasury's Office of Foreign Assets Control.

Version2 will, at its sole discretion, and without warning, terminate any services used by or provided to any entity listed by OFAC. This includes any site that is funded, in whole or in part, by donations, advertisement or direct funding from an entity listed by OFAC. No refund will be granted to any customer terminated for violation of this provision of our AUP.

### **CONTENT**

All services provided by Version2 may be used for lawful purposes only. Version2 does not monitor, edit, censor, or take responsibility for Customer content or communications from within the network controlled by Version2 except inasmuch to determine if violations of the AUP have occurred once a suspected violation has been brought to the attention of Version2. Therefore, Customer is solely responsible for the content and use of their Services as provided by Version2 and should ensure that such use falls within the guidelines of the AUP. Version2 cannot and will not monitor, edit, censor, or otherwise interfere

with information or content Customers may retrieve from sources outside Version2 network even when such information is made available to Customers through the use of material deliverable to any site or Service maintained by Version2, such as via e-mail. Because of this, Version2 will not be responsible for injury or liability to any Customer resulting from communications that may be offensive, misleading, illegal, or otherwise unsuitable in the view of the Customer. Customer further agrees to indemnify and hold harmless Version2 or any of its subsidiaries from claims resulting from the use of any provided Service which damages the Customer or any other party.

#### **ADULT CONTENT**

The use of, display of, or presentation in any form of any adult material considered pornographic in nature is strictly prohibited. Pornographic material is strictly prohibited on our servers, networks, and storage devices. Adult material is considered, but not limited to, any content that is considered sexual by nature, contains nudity, sexual acts, is obscene in any form including but not limited to photographs and drawings. Violation of this, or any other provision of this AUP is grounds for termination of your account(s) without refund or recourse. Adult related communities that are secured from access by minors may be permitted and are considered on a case by case basis. If you are not sure what constitutes adult content, please contact us for clarification.

#### **BANDWIDTH AND STORAGE**

Customer agrees that use of the Services under this Agreement will not exceed the bandwidth and storage usage limits in your Customer Agreement for your plan type. If Customer uses any bandwidth or storage space in excess of the agreed upon number of megabytes per month, Customer agrees to pay the associated additional charges.

#### **PERFORMANCE HOSTING**

Version2 operates a performance based hosting service. In order to maintain maximum performance for each customer utilizing resources on Version2's shared services, we must not allow any single customer to consume more than a fair share of system resources or consume resources in a manner that does not allow other customers access to a fair share of the total resources available for that particular service. Customer's use of our service is their acknowledgement of their desire to host their site in a performance based environment and Customer recognizes our responsibility to ensure that no single customer's web site, database, e-mail or hosted application consumes more than its fair share of resources, including your application. Customer also recognizes their responsibility to take all appropriate measures to ensure their use of our services does not consume more resources than is considered appropriate for a shared environment. In the event Customer's use of our services consumes more than its fair share of system resources, including, but not limited to, CPU cycles, system RAM memory or available bandwidth, you agree that Version2 may take any and all actions necessary to maintain the integrity of services provided to all customers sharing the services, including, but not limited to, restricting the number of connections permitted to Customer's service, disabling a portion of Customer's service or shutting down Customer's service completely until the cause of the excessive resource consumption can be identified by them and corrected to our satisfaction. Customer agrees that it is their responsibility to identify and correct the source of the resource consumption and any help provided by our staff is billable at our currently published hourly rate. Customer agrees that all performance related issues caused by their use of our services are solely Customer's responsibility and Customer agrees to hold Version2 harmless for any damages caused by their actions and will indemnify Version2 against any liability of damages for any action Version2 deems necessary and acts upon in order to maintain the integrity of its equipment and/or services. Customer also agrees to waive any rights they may have under our performance guarantee when action is taken due to their use of our services consuming excessive resources.

#### **SPAM FILTERING SERVICES**

Customer agrees that Version2. has the right to purge messages determined to be SPAM from all SPAM folders in your e-mail boxes when the e-mail has been stored for seven (7) days or more. Customer understands and agrees that e-mail messages

may be lost, improperly routed, improperly delivered, inadvertently deleted or not delivered at all. Customer agrees that Version2. has no liability to you for the delivery of e-mail, failure to deliver e-mail, failure to store e-mail or any other circumstance upon which an e-mail may not be available to you. Customer also agrees to abide by the AUP with regard to e-mail services.

### **E-MAIL CONTENT**

Since most computer viruses and worms are distributed via e-mail, Version2. actively monitors and blocks certain e-mail attachments from the hosted system. These attachments include, but are not limited to the following: \*.exe, \*.lnk, \*.pif, \*.vb, \*.svr, \*.scr, \*.ldr, \*.inf, \*.reg, \*.com, \*.bat, \*.wsf, \*.W32, \*.ceo, \*.cpl and \*.cmd. Customer understands and agrees that e-mail messages may be lost, improperly routed, improperly delivered, inadvertently deleted or not delivered at all. Customer agrees that Version2. has no liability to you for the delivery of e-mail, failure to deliver e-mail, failure to store e-mail or any other circumstance upon which an e-mail may not be available to you.

**Violations of this AUP:** The following constitute violations of this AUP which may, in our discretion, result in the suspension or termination of the Services:

- **Harmful or illegal uses:** Use of the Services for illegal purposes or in support of illegal activities, to cause harm to minors or attempt to contact minors for illicit purposes, to transmit any material that threatens or encourages bodily harm or destruction of property or to transmit any material that harasses another is prohibited. Version2 will, at its sole discretion, and without warning, terminate any services used by or provided to any entity listed by OFAC. This includes any site that is funded, in whole or in part, by donations, advertisement or direct funding from an entity listed by OFAC. No refund will be granted to any customer terminated for violation of this provision of this AUP.
- **Fraudulent activity:** Use of the Service to conduct any fraudulent activity or to engage in any unfair or deceptive practices, including but not limited to fraudulent offers to sell or buy products, items, or services, or to advance any type of financial scam such as “pyramid schemes,” “Ponzi schemes,” and “chain letters” is prohibited.
- **Forgery or impersonation:** Adding, removing, or modifying identifying network header information in an effort to deceive or mislead is prohibited. Attempting to impersonate any person by using forged headers or other identifying information is prohibited. The use of anonymous remailers or nicknames does not constitute impersonation.
- **SPAM:** Version2 has a zero tolerance policy for the sending of unsolicited commercial email (“SPAM”) over our network. Use of the Service to transmit any unsolicited commercial or unsolicited bulk e-mail is prohibited we will determine, in our sole discretion, what constitutes SPAM for the purposes of this paragraph. You are not permitted to host, or permit the hosting of, sites or information that is advertised by SPAM from other networks. To prevent unnecessary blacklisting due to SPAM, we reserve the right to drop the section of IP space in SPAM or denial-of-service complaints if it is clear that the offending activity is causing harm to parties on the Internet, if open relays are on your network or if denial of service attacks are originated from your network.
- **Internet relay Chat (IRC).** The use of IRC on our servers is prohibited.
- **Open or “anonymous” proxy:** Use of open or anonymous proxy servers is prohibited.
- **Cryptomining.** Using any portion of the Hosting Services for mining cryptocurrency or using any bandwidth or processing power made available by or through the Hosting Services for mining cryptocurrency is prohibited.
- **Hosting spammers:** The hosting of websites or services using a hosted server that supports spammers, or which causes (or is likely to cause) our IP space to be listed in any of the various SPAM databases, is prohibited. Any subscribers violating this policy will have their server immediately removed from our network and the server will not be reconnected until such time that you agree to remove all traces of the offending material immediately upon reconnection and agree to allow us to access the server to confirm that all material has been completely removed. Any subscriber guilty of a second violation will be immediately and permanently removed from our network for cause and without prior notice.
- **Email/message forging:** Forging any message header, in part or whole, of any electronic transmission, originating or passing through the Service, is prohibited.

- **Unauthorized access:** Use of the Service to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Version2 or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data, it is prohibited. This includes but is not limited to accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other networks, use or distribution of tools designed for compromising security such as password guessing programs, cracking tools, or network probing tools.
- **IP infringement:** Use of the Service to transmit any materials that infringe any copyright, TM, patent, trade secrets or other proprietary rights of any third party, is prohibited.
- **Collection of personal data:** Use of the Service to collect, or attempt to collect, personal information about third parties without their knowledge or consent is prohibited.
- **Network disruptions and sundry activity.** Use of the Services for any activity which affects the ability of other people or systems to use the Services or the internet is prohibited. This includes “denial of service” (DOS) attacks against another network host or individual, “flooding” of networks, deliberate attempts to overload a service, and attempts to “crash” a host.
- **Distribution of malware:** Intentional distribution of software or code that attempts to and/or causes damage, harassment, or annoyance to persons, data, and/or computer systems is prohibited.
- **Excessive use or abuse of shared resources:** The Services depend on shared resources. Excessive use or abuse of these shared network resources by one customer may have a negative impact on all other customers. Misuse of network resources in a manner which impairs network performance is prohibited. You are prohibited from excessive consumption of resources, including CPU time, memory, and session time. You may not use resource-intensive programs which negatively impact other customers or the performances of our systems or networks.
- **Allowing the misuse of your account:** You are responsible for any misuse of your account, even if the inappropriate activity was committed by an employee or independent contractor. You shall not permit your network, through action or inaction, to be configured in such a way that gives a third party the capability to use your network in an illegal or inappropriate manner. You must take adequate security measures to prevent or minimize unauthorized use of your account. It is your responsibility to keep your account credentials secure.

To maintain the security and integrity of the hosted environment, we reserve the right, but not the obligation, to filter content, DNS requests, or website access for any web requests made from within the hosted environment.

**Revisions to this AUP:** We reserve the right to revise or modify this AUP at any time and in any manner. Notice of any revision, amendment, or modification will be provided to you, either by email or by posting the modifications in any manner that we believe you are likely to see. Changes to this AUP shall not be grounds for early contract termination or non-payment.

**Last Updated: October 2022**

<b>Company:</b>	
<b>Name:</b>	
<b>Title:</b>	
<b>Phone:</b>	
<b>Signature:</b>	