

Emailing & Hosting Services Agreement

MASTER SERVICES AGREEMENT between Technically Creative Inc. ("**we**" or "**Technically Creative**") and the customer who signs an Order for Technically Creative Inc. services ("**you**" or "**Customer**").

1. HOW THIS AGREEMENT WORKS

You will be provided with an invoice that describes the services you have chosen and the related fees. The Invoice will incorporate this Master Services Agreement and an Acceptable Use Policy. It may also incorporate one or more addenda to this Master Services Agreement if you are purchasing services for which we have special legal terms. When we use the term "Agreement" in any of these documents, we are referring collectively to all of them.

2. SOME DEFINED TERMS

Some words used in the Agreement have particular meanings:

"**Acceptable Use Policy**" or "**AUP**" means the Technically Creative Inc. Acceptable Use Policy provided.

"**Bulk Mail**" means email messages of similar content that are sent to more than 250 recipients.

"**Business Day**" or "**Business Hours**" means 8:00 a.m. – 5:00 p.m. Monday through Friday, United States central time, excluding federal public holidays in the United States.

"**Confidential Information**" means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including: (i) for you, the content of email and other information transmitted via Technically Creative Inc. Mail Services, (ii) for Technically Creative Inc., unpublished prices and other terms of service, audit and security reports, and proprietary technology, and (iii) for both of us, information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other's Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be "Confidential Information" of the other party.

"**Invoice**" means the Technically Creative Inc Service Invoice or other written order for services that details the Mail Services and/or Supplemental Services you have selected.

"**Junk Mail**" means email that is captured by our mail filter and other email that is reported by you to us as undesirable.

"**Mail Services**" means the Noteworthy®, Hosted Exchange, Outreach™ and/or other hosted email service or email marketing service described on your invoice plus Support.

"**Service**" or "**Services**" means the Mail Services and any Supplemental Services we may provide to you, collectively.

"**Supplemental Service**" means the services described in Section 5 below, and any other services we provide to you other than the Mail Services.

"**Support**" means (i) management of your Mail Services by a customer care team that includes individuals trained in the mail system you select, and (ii) availability of support twenty four (24) hours per day, seven days per week, year round.

3. MAIL SERVICES.

Contingent on your satisfaction of Technically Creative Inc. credit approval criteria, Technically Creative Inc. will provide the Mail Services you select as follows:

3.1 Administration: Technically Creative Inc. will provision the initial environment. You will otherwise be responsible for administering your Mail Service, including adding mailboxes, adding wireless or other service components, adding storage capacity, managing settings, and configuring spam filters.

3.2 Support: Technically Creative Inc. will provide Support to your designated administrator(s) or technical contacts on the account. Technically Creative Inc. will not provide Support directly to your end users unless specifically agreed in an Order.

3.3 Uptime Guarantee: Your Mail Service will be available 100% of the time in a given calendar month, excluding downtime due to scheduled maintenance. Downtime exists when you are unable to send and receive mail as a result of a failure of the Technically Creative Inc. network, or are unable to use a material feature of your Mail Service. Downtime does not exist if you are unable to use your Mail Service as a result of a failure outside of the Technically Creative Inc. network, such as your connection to the Internet or your systems. Technically Creative Inc. maintenance is currently scheduled for Saturday and Sunday from 12:00 – 4:00 central time, although Technically Creative Inc. does not expect to use each maintenance window. Technically Creative Inc. will announce any maintenance that is expected to result in downtime at least seven days in advance. In the event of downtime exceeding the availability guarantee by five consecutive hours or more, you may request a credit equal to the monthly recurring fee for the affected Mail Service multiplied by the percentage of your mailboxes affected (the "Maximum Credit"). If the downtime continues for less than five consecutive hours, then you are eligible for a prorated portion of the Maximum Credit equal to the number of minutes of downtime divided by five hours (300 minutes). To request a credit you must submit a request via email to your account representative that describes the downtime and how it affected your use of the Mail Service. The request must be submitted within seven days of the downtime. Technically Creative Inc. will apply any credit that is due against your next invoice for Mail Services.

3.4 Security. Technically Creative Inc. agrees that for the term of this Agreement, its security practices will be at least as stringent as the minimum security practices described below:

Physical Access

The Technically Creative Inc. servers used to provide the Mail Services will be located in a controlled access data center operated by Technically Creative Inc. or a Technically Creative Inc. affiliate. Access to the datacenter will be restricted to employees or its agents who need access for the purpose of providing the services, except that Technically Creative Inc. may provide access to third parties for audit purposes, provided that the third parties are escorted at all times by a employee. The data center will be staffed 24/7/365 and will be monitored by video surveillance. Entrance to the data center will be authorized by proximity-based access cards and biometric hand scanners or other approved security substitute.

Technically Creative Inc. Personnel

- Screening. Pre-employment background screening of all employees who have access to customers' accounts.
- Access. Technically Creative Inc. will restrict the use of administrative access codes for customer accounts to its employees and other agents who need the access codes for the purpose of providing the services. Technically Creative Inc. personnel who use access codes shall be required to log on using an assigned user name and password.
- Internet Access. The servers used to provide the services will be located behind a physical firewall.

Reports of and Response to Security Breach.

Technically Creative Inc. will immediately report to you any unauthorized access or release of your information of which we become aware. Upon request, we will promptly provide to you all information and documentation that we have available to us in connection with any such event.

4. LIMITATIONS ON SERVICES

4.1 Filtering. Technically Creative Inc. provides certain services designed to filter unwanted email, such as spam, phishing scams, and email infected with viruses. **You acknowledge that the technological limitations of the filtering service will likely result in the capture of some legitimate email, and the failure to capture some unwanted email, including email infected with viruses.** Technically Creative Inc. recommends that you employ additional security measures, such as a desktop virus scanner and firewall, on computers that are connected to the Internet. Email that is quarantined by the filtering system is excluded from the Uptime Guaranty.

4.2 Delivery Failures. Technically Creative Inc. will use commercially reasonable efforts to deliver your email messages. Third party filtering services may from time to time prevent successful delivery of your messages.

4.3 Memory Limitations. Mail that exceeds the storage limit when received may be permanently lost. You may adjust the storage capacity of your individual mailboxes via the control panel, and it is your obligation to monitor and adjust the storage capacity of individual mailboxes as needed. An individual email message that exceeds the per-message size limit may also be permanently lost. As of May 2008 the per message size limit per message is 50MB.

4.4 Backups. Technically Creative Inc. performs data backups on a "snap shot" basis at a specific moment. Therefore Technically Creative Inc. may not create a backup of every item that is sent, received or stored. The backup will only capture those items (including mailboxes and public folders) that are present during the time of the backup. Data on back ups may be retrieved only for a limited number of days. See information in Section 5.3 below regarding Records Retrieval services.

5. SUPPLEMENTAL SERVICES.

The following additional terms will apply if you elect to purchase one of the supplemental services described below.

5.1 Migration Services. At your request, we will provide an advance estimate of fees based on the information you provide to us. However, you acknowledge that our fee will be calculated on the basis of the actual number of mailboxes and amount of data migrated and may exceed the estimate. You acknowledge that after we begin the migration services we may discover technical limitations related to the configuration of your data that prevent us from successfully completing the migration. We will not charge you a fee if we are unable to successfully migrate your data. You acknowledge that there is **special risk** that data will be lost during a migration. You agree that you will create a reliable back up of all data to be migrated prior to the time that we begin the migration. You agree that we are not liable to you for damages resulting from the loss or corruption of your information as part of the migration

5.2 Records Retrieval. The process for recovering your deleted messages varies depending on the Mail Service you select. Generally, Noteworthy customers will be able to recover deleted messages via the administrative control panel for up to fourteen (14) days from the day deleted, and Hosted Exchange customers will be able to recover deleted messages for up to thirty (30) days from the date deleted via their Web interface. At your request, Technically Creative Inc. may recover deleted items for you, and may be able to recover your deleted items after these times. However records retrieval services will be performed on a fee basis and will take up to two (2) hours for a deleted item, and up to six hours for an entire mailbox. At your written request made at or prior to the termination of your Mail Service, Technically Creative Inc. will provide a complete copy of your mail data then in its possession on a fee basis no later than ten (10) days following the date of the request, provided that all payments on your account must be made prior to Technically Creative Inc.'s release of the copy of the data to you. Unless you have made such a request, Technically Creative Inc.'s obligation to store email messages and other items terminates at the effective date of termination of the Mail Services.

5.3 Archiving Services. Technically Creative Inc. provides limited archiving services. Technically Creative Inc. does not provide long term archiving services, but it does have arrangements with certain third party vendors that enable Technically Creative Inc. to create an automated process for you to archive your items with the third party. Your use of any third party archiving service is governed by the terms of your separate agreement with the third party and you agree that Technically Creative Inc. is not liable to you for the third party's breach of its obligations to you.

6. OWNERSHIP OF INTELLECTUAL PROPERTY

Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights, and other intellectual property. Any intellectual property developed by Technically Creative Inc. during the performance of the Services shall belong to Technically Creative Inc. unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

7. YOUR OBLIGATIONS

7.1 You must comply with Technically Creative Inc.'s Acceptable Use Policy, including the affirmative opt in requirement for bulk mail.

7.2 You may not use the Mail Services to send Bulk Mail except via our Outreach mail marketing service.

7.3 You must use reasonable security precautions in light of your use of the Mail Services.

7.4 You must cooperate with Technically Creative Inc.'s reasonable investigation of outages, security problems, and any suspected breach of the Agreement.

7.5 You must provide Technically Creative Inc. with accurate information to help Technically Creative Inc. determine if any tax is due with respect to the provision of the Mail Services.

7.6 You are responsible for keeping your billing contact and other account information up to date.

7.7 You must pay when due the fees for the Mail Services.

8. PROMISES WE DO NOT MAKE

8.1 We do not promise that the Mail Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Confidential Information, and property. Technically Creative Inc. has no obligation to provide security other than as stated in this Agreement.

8.2 We disclaim any and all warranties not expressly stated in the Agreement including the implied warranties of merchantability, fitness for a particular purpose, and noninfringement. You are solely responsible for the suitability of the service chosen. Unless otherwise agreed, all Supplemental Services are performed on an "AS IS, AS AVAILABLE" basis.

9. UNAUTHORIZED ACCESS TO YOUR DATA OR USE OF THE SERVICES

Technically Creative Inc. is not responsible to you for unauthorized access to your data or the unauthorized use of the Mail Services unless the unauthorized access or use results from Technically Creative Inc.'s failure to meet its security obligations stated in this Agreement. You are responsible for the use of the Mail Services by any employee of yours, any person to whom you have given access to the Mail Services, and any person who gains access to your data or the Mail Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

10. TERM

The initial term begins on the Effective Date and continues for the period stated in the Order. Upon expiration of the initial term, the Order will automatically renew for successive renewal terms of one month each until terminated as provided in Section 11, 12 or 13 below.

11. TERMINATION FOR CONVENIENCE

You may terminate the Agreement for convenience at any time on thirty (30) days advance written notice. Technically Creative Inc. may terminate for convenience at any time on thirty (30) days advance written notice.

12. YOUR RIGHT TO TERMINATE WITHOUT NOTICE

You may terminate the Agreement without providing thirty (30) days notice as required in Section 11 above if: (i) we materially fail to provide the Mail Services as agreed and do not remedy that failure within three days of your written notice describing the failure, or (ii) we materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within twelve (12) days of your written notice describing the failure.

13. OUR RIGHT TO TERMINATE FOR BREACH

We may terminate the Agreement for breach on written notice if: (i) we discover that the information you provided to us for the purpose of establishing the Mail Services is materially inaccurate or incomplete, (ii) the individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer, (iii) your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of our written notice, (iv) you have made payment arrangements via a credit card or other third party and the third party refuses to honor our charges; (v) a credit report indicates you no longer meet our reasonable credit criteria, (vi) you use your Mail Service in violation of the AUP, or (vii) you fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure.

14. FEES

14.1 The fees for the Services will be as stated in your invoice. We may increase our fees at any time on forty five (45) days advance written notice to you. Recurring fees will be billed in advance, either monthly, quarterly, or annually, as agreed in an Order. Non-recurring fees, such as migration services and records retrieval, will be billed monthly in arrears.

14.2 Fees are due on receipt of invoices. Technically Creative Inc. may suspend all Services (including Services provided pursuant to any unrelated Order or other agreement we may have with you) if payment of any invoiced amount is overdue, and you do not pay the overdue amount within four (4) Business Days of our written notice to your billing contact. You agree that if your Service is reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee not to exceed \$250.00. Technically Creative Inc. may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days and Technically Creative Inc. brings a legal action to collect, you must also pay Technically Creative Inc.'s reasonable costs of collection, including attorney fees and court costs. If your check is returned for insufficient funds, we may charge you a fee up to the maximum amount permitted by law. You authorize Technically Creative Inc. to obtain a credit report at any time during the term of the Agreement.

14.3 If Technically Creative Inc. is required by law to pay taxes on the provision of the Service, you must pay Technically Creative Inc. the amount of the tax that is due or provide Technically Creative Inc. with satisfactory evidence of your exemption from the tax. Fees must be paid in U.S. Dollars. Invoices that are not disputed within one hundred and eighty (180) days of invoice date are conclusively deemed accurate.

15. EXPORT MATTERS

You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Technically Creative Inc. is legally prohibited to provide the Services. You may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, nor may you provide administrative access to the Service to any person (including any natural person or government or private entity) that is located in or is a national of Cuba, Iran, Libya, Sudan, North Korea or Syria or any country that is embargoed or highly restricted under United States export regulations.

16. SUSPENSION OF SERVICES

You agree that we may suspend Services without liability if: (i) we reasonably believe that the Services are being used in violation of the Agreement; (ii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement; (iii) your Mail Services are accessed or manipulated by a third party without your consent, or (iv) as required by law. We will give you reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, if such grounds are capable of cure.

17. PRIVACY/CONFIDENTIAL INFORMATION

17.1 Content/Message Routing Data. Your email messages and other items sent or received via the Mail Service will include: (i) the content of the communication ("**content**"), and (ii) certain information that is created by the systems and networks that are used to create and transmit the message (the "**message routing data**"). The content includes things like the text of email messages and attached media files, and is generally the information that could be communicated using some media other than email (like a letter, telephone call, CD, DVD, etc.) The message routing data includes information such as server hostnames, IP addresses, timestamps, mail queue file identifiers, and spam filtering information, and is generally information that would not exist but for the fact that the communication was made via email.

17.2 Content Privacy. We respect your privacy. The content of your items is your Confidential Information and is subject to the restrictions on use and disclosure described below. In addition to those restrictions, we agree that our personnel will not view the content of your items except in the specific ways defined below. However, you agree that we may view and use the message routing data for our general business purposes, including maintaining and improving security, improving our services, and developing products. In addition, you agree that we may disclose message routing data to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

17.3 Our Limited Rights to View and Use Your Content. You agree that our personnel may view the content of your email and other items for the following purposes:

- i. as necessary to respond to your specific support request;
- ii. to ensure that back-ups are being performed properly;
- iii. for Bulk Mail, to ensure compliance with our requirements for Bulk Mail stated in the Agreement, including the Acceptable Use Policy;
- iv. as appropriate to the exercise of our rights to use and disclose your Confidential Information as described below in this Section; and
- v. for Junk Mail, to improve our email filter.

If we use third party vendors to help us provide Services to you, we may permit those vendors to view and use your email content for the same purposes described above, provided that the vendors are subject to confidentiality and privacy restrictions at least as stringent as those stated in this Master Services Agreement. In addition, we may share the content of your Junk Mail with independent third party abuse agencies and trade groups for the purpose of assisting in industry initiatives to control undesirable email.

You acknowledge that Technically Creative Inc. is required to establish an abuse@[yourdomain].com and postmaster@[yourdomain].com address for each of your domains. Technically Creative Inc. personnel will review the content of all mail received at these addresses. You may configure your Mail Service such that mail is not received at these addresses but is instead forwarded to someone within your organization.

WE WILL NOT EMPLOY TECHNOLOGY TO READ YOUR EMAIL MESSAGES IN ORDER TO TARGET, DISPLAY OR SEND MARKETING ADS BASED ON THE CONTENT OF THOSE EMAIL MESSAGES.

17.4 Usage Data. We collect and store information related to your use of the Services, such as use of SMTP, POP3, IMAP, and filtering choices and usage. You agree that we may use this information for our general business purposes and may disclose the information to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

17.5 Confidential Information.

Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

- (i) to our respective service providers, agents and representatives, provided that such service providers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this Master Services Agreement,
- (ii) to law enforcement or government agency if required by a subpoena or other compulsory legal process, or if either of us believes, in good faith, that the Confidential Information reflects conduct that may violate applicable law;
- (iii) as required by law; or
- (iv) in response to a subpoena or other compulsory legal process, provided that each of us agrees to

give the other written notice of at least seven days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven days advance notice is not reasonably feasible), unless the law forbids such notice.

18. LIMITATION ON DAMAGES

18.1 We are not liable to you for failing to provide the Mail Services unless such failure results from a breach of the Uptime Guarantee, or results from our gross negligence, willful misconduct, or intentional breach of the Agreement. The dollar credits stated in the Uptime Guarantee are your **sole and exclusive** remedy for our failure to meet the Uptime Guaranty.

18.2 Neither of us (nor any of our employees, agents, affiliates or suppliers) is liable to the other for any indirect, special, incidental or consequential loss or damages of any kind, or for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages.

18.3 You hereby release Technically Creative Inc. and its employees, agents, affiliates and third party suppliers from any liability for damages arising from the failure of Technically Creative Inc.'s filtering services to capture unwanted email or from the capture of legitimate email, or from a failure of your email to reach its intended recipient as a result of a filtering service used by the recipient or the recipient's email service provider.

18.4 Notwithstanding anything in the Agreement to the contrary, except for claims based on our willful misconduct, the maximum aggregate monetary liability of Technically Creative Inc. and any of its employees, agent, suppliers, or affiliates, under any theory of law (including breach of contract, tort, strict liability, and infringement) shall not exceed three times the monthly recurring fee payable under the Order(s) in effect for the Mail Service at the time of the occurrence of the event(s) giving rise to the claim.

19. INDEMNIFICATION

19.1 If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the "Technically Creative Inc. Indemnitees") is faced with a legal claim by a third party arising out of your actual or alleged gross negligence, willful misconduct, violation of law, failure to meet the security obligations required by the Agreement, violation of the AUP, or violation of Section 15 (Export Matters) of this Master Services Agreement, then you will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine or other amount that is imposed on the Technically Creative Inc. Indemnitees as a result of the claim. Your obligations under this subsection include claims arising out of the acts or omissions of your employees, any other person to whom you have given access to the Mail Services, and any person who gains access to the Mail Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. If you resell the Services, the grounds for indemnification stated above also include any claim brought by your customers or end users arising out of your resale of the Services.

19.2 You must also pay reasonable attorney fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with us.

19.3 If either of us receives notice of a claim that is covered by this Section, the notice must be promptly forwarded to the financially responsible party (the "**Indemnifying Party**"). The Indemnifying Party will be allowed to conduct the defense of the matter, provided that it uses due care and diligence, and provided that its decisions regarding the defense of the matter are reasonable and are promptly communicated to the party against whom the claim is made (the "**Indemnified Party**"). The Indemnifying Party's choice of counsel to defend the claim shall be subject to the approval of the Indemnified Party, not to be unreasonably withheld. The Indemnifying Party may not settle the claim without the consent of the Indemnified Party, not be unreasonably withheld. The Indemnified Party shall provide such information and assistance as the Indemnifying Party may reasonably request, at the expense of the Indemnifying Party. The Indemnified Party may, at its own expense, participate in the defense of the matter with counsel of its choosing.

20. MICROSOFT SOFTWARE

In addition to the terms of our Agreement, your use of any Microsoft® software is governed by Microsoft's license terms.

21. OTHER PEOPLE'S PRODUCTS AND SERVICES

We may from time to time recommend or arrange for you to purchase or license third party software, services or other products that are not included as part of the Mail Services. TECHNICALLY CREATIVE INC. MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING SUCH THIRD PARTY PRODUCTS AND RELATED SUPPORT SERVICES AND AS BETWEEN YOU AND TECHNICALLY CREATIVE INC., SUCH SERVICES ARE PROVIDED "AS IS." Your use of any third party software, services, and other products is governed by the terms of your agreement with the third party.

22. CHANGES TO THE ACCEPTABLE USE POLICY and PRIVACY TERMS

We may change our Acceptable Use Policy and Section 17.3 (Our Limited Right to View and Use Your Content), provided that any changes are reasonable and consistent with applicable law and industry norms. Any such changes made during the term of your Agreement will become effective as to you upon the first to occur of: (i) renewal, (ii) your execution of a new/additional Order for your account that incorporates the revised AUP or MSA by reference, or (iii) thirty (30) days following our notice to you describing the change. If the change materially and adversely affects you, you may terminate the Agreement by giving us written notice of termination on such grounds no later than thirty (30) days following the date the change became effective as to you and we will not enforce the change as to you for thirty (30) days following the date of your notice. If you terminate your Service because the change adversely affects you, we may decide to waive that change as to you and keep your Agreement in place for the remainder of the term.

23. NOTICES

Your routine communications regarding the Services should be sent to your Technically Creative Inc. account representative via email. If you want to give us a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail and first class United States mail to:

Damatulli@TechnicallyCreative.com
Technically Creative Inc.
7 Sheafe Circle
Rock Tavern, NY 12575

Technically Creative Inc.'s routine communications regarding the Services and legal notices will be sent to the individual(s) you designate as your contact(s) on your account either by electronic mail, United States mail, or overnight courier, except that Technically Creative Inc. may give notice of an amendment to the AUP or Section 17.3 (Our Limited Right to View and Use Your Content) by posting the notice on your Technically Creative Inc. control panel. Notices are deemed received as of the time delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day following the time delivered, except that notices of AUP and Section 17.3 amendments are deemed delivered as of the first time that you log on to your Technically Creative Inc. management console after the time that the notice is posted. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

24. IP ADDRESSES.

Upon expiration or termination of the Agreement, you must discontinue use of the Mail Services and relinquish use of the IP addresses and server names assigned to you by Technically Creative Inc. in connection with Services, including pointing the DNS for your domain name(s) away from Technically Creative Inc. Services.

25. ASSIGNMENT

You may not assign the Agreement without Technically Creative Inc.'s prior written consent. We may assign the Agreement in whole or in part as part of a corporate reorganization or a sale of our business, and we may transfer your Confidential Information as part of any such transaction.

26. FORCE MAJEURE

Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

27. GOVERNING LAW, LAWSUITS

The Agreement is governed by the laws of the State of Texas, exclusive of its choice of law principles, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. **Exclusive venue for all disputes arising out of the Agreement shall be in the state or federal courts in Bexar County, Texas, and we each agree not to bring an action in any other venue.** You waive all objections to this venue and agree not to dispute personal jurisdiction or venue in these courts. You agree that you will not bring or participate in any class action lawsuit against Technically Creative Inc. or any of its employees or affiliates. Each of us agrees that we will not bring a claim under the Agreement more than two years after the time that the claim accrued.

28. SOME AGREEMENT MECHANICS

An Invoice may be amended by a formal written agreement signed by both parties, or by an exchange of correspondence, including electronic mail, that includes the express consent of an authorized individual for each of us. Any such correspondence that adds or modifies Services in connection with an account established by an Order shall be deemed to be an amendment to that Order, notwithstanding the fact that the correspondence does not expressly refer to the Invoice.

If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: Invoice, any addendum to the Master Services Agreement, the Master Services Agreement, and the Acceptable Use Policy. If any part of the Agreement is found unenforceable by a court or other tribunal, the rest of the Agreement will nonetheless continue in effect and we agree that the tribunal may reform the unenforceable part if it is possible to do so consistent with the material economic incentives of the parties resulting in this Agreement. Each of us may enforce each of our respective rights under the Agreement even if we have waived the right or failed to enforce the same or other rights in the past. Our relationship is that of independent contractors and not business partners. Neither of us is the agent for the other, and neither of us has the right to bind the other on any agreement with a third party. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word "including" in the Agreement shall be read to mean "including without limitation." All provisions that by their nature are intended to survive expiration or termination of the Agreement shall survive expiration or termination of the Agreement.

If you have made any change to the Agreement documents that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

The Agreement may be signed in multiple counterparts, which taken together will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

The Agreement is the complete and exclusive agreement between you and Technically Creative Inc. regarding its subject matter and supersedes and replaces any prior agreement, understanding or communication, written or oral.

Company: _____ **Date:** _____

Signature/Title: _____