



## **CARBINTECH INC HOSTING AGREEMENT**

**Updated 05/01/2009**

### **1. Definitions.**

- 1.1 "Customer" means the persons, entity or agents and authorized representatives accepting this agreement.
- 1.2 "Content" means all text, pictures, sound, graphics, video, links, and other data stored by Customer on Carbintech INC server computers.
- 1.3 "Website" means pages presenting the Content stored by Customer on Carbintech INC server computers.
- 1.4 "User" means users of Customer's Website.
- 1.5 "User Content" means all text, pictures, sound, graphics, video, links, and other data stored by Users on Carbintech INC server computers.
- 1.6 "Confidential Information" means information that Customer takes reasonable steps to maintain in confidence and identifies in writing to Carbintech INC as confidential.

### **2. Web Hosting.**

#### 2.1 - Hosting.

Carbintech INC will provide dedicated or shared server computers, as specified in Exhibit A, with an Internet address for storage and access of Content, User Content, and the Website. The Website, Content, and User Content must be "server-ready." Carbintech INC will provide bandwidth and storage as specified in Exhibit A. If Customer requires additional bandwidth or storage, Carbintech INC will negotiate in good faith to amend this Agreement unless Carbintech INC server computers cannot accommodate the requested bandwidth or storage.

#### 2.2 - Website Backup.

Carbintech INC will backup the Website in a commercially reasonable manner. However, Carbintech INC is not responsible for lost Content or lost User Content. Website backups will be stored by Carbintech INC for no longer than 14 days. Carbintech INC will provide, at Customer's expense, an electronic copy of the backup Website to Customer upon written request by Customer. Backups are intended for disaster recovery, not the restoration of individual files.

#### 2.3 - Server Logs.

As requested by Customer, Carbintech INC will deliver to Customer in electronic form the Server Log of Website activity. Customer will be entitled to one month of log storage free of charge. Carbintech INC may, at its option, charge a fee to Customer for additional space required to store oversized logs.

#### 2.4 - Standards.

Carbintech INC services will conform to the following:

##### 2.4.1 - Availability of Website.

Carbintech INC will provide hosting services for the Website that meet reasonable commercial standards for, among other matters, packet loss, accessibility, latency, availability, and throughput.

##### 2.4.2 - Security.

Carbintech INC will take commercially reasonable steps to prevent unauthorized access to the Website, Content, User Content, and Confidential Information stored on Carbintech INC server computers.

##### 2.4.3 - Server/Network Computer Outages.

Carbintech INC will employ best efforts in providing advance notice to Customer of scheduled server computer/network outages.

#### 2.4.4 - Disclaimers.

Carbintech INC provides no equipment, software, or communication connections to Customer. Carbintech INC makes no representations, warranties or assurances that the Customer's equipment, software, and communication connections will be compatible with Carbintech INC hardware and service.

### **3. Ownership of Content.**

All Content and User Content stored by Customer on Carbintech INC server computers shall at all times remain the property of Customer. Customer grants to Carbintech INC a non-exclusive, worldwide license to the Content and User Content only to the extent necessary for Carbintech INC to host the Website.

### **4. Content Control.**

#### 4.1 - Lawful Purpose.

Customer will only use Carbintech INC hardware and services for lawful purposes and Customer will not store or provide any Content or User Content or link to any material that violates foreign, federal, state or local law, the Terms of Service of Exhibit B and any modifications thereof, Carbintech INC posted Acceptable Use Policy, or any other Carbintech INC policy.

#### 4.2 - Remedy for Violation.

Should Carbintech INC become aware that Customer has violated Part 4.1, Carbintech INC may, at its option, remove the Content or User Content in violation, immediately terminate hosting Customer's Website under Part 6.3, and/or notify authorities. If hosting is terminated, Carbintech INC may, in its sole discretion, reinstate hosting upon adequate showing of Customer's right to use the Content or User Content.

### **5. Payments.**

#### 5.1 - Fees.

Customer shall pay fees agreed upon during account signup. Carbintech INC will invoice monthly (unless otherwise agreed in writing), and payment is due fourteen (14) days from invoicing. In the case of credit card payments Carbintech INC will automatically charge Customer Credit Card on file all fees associated with the account on the due date. Carbintech INC may, at its option, charge a 10% fee for late payments.

#### 5.2 - Returned Checks and Declined Credit Cards may incur a fee.

#### 5.3 - Account Updates.

It is the responsibility of the customer to maintain accurate billing information with Carbintech INC. This may include updated credit card information, email address and mailing address.

#### 5.4 - Taxes.

Customer is solely liable for any taxes or fees payable for products or services sold by Customer on the Website.

### **6. Term and Termination.**

#### 6.1 - Term.

The initial term is agreed upon during account signup. After the initial term, this Agreement will automatically renew on a month-to-month basis until terminated.

#### 6.2 - Termination by Customer.

During the initial term, Customer may terminate this Agreement upon the material breach of Carbintech INC, if such material breach remains uncured for thirty (30) days following written notice to Carbintech INC. This cure period shall be extended by delay caused by events beyond the control of Carbintech INC. including, but not limited to, natural disasters, governmental prohibitions or regulations, viruses that did not result from the acts or omissions of

Carbintech INC, or technical faults of Carbintech INC service providers or vendors. After the initial term, Customer may terminate this Agreement upon fourteen (14) days written notice to Carbintech INC.

#### **6.3 - Termination by Carbintech INC.**

Carbintech INC may immediately terminate this Agreement for cause at any time without penalty. Causes justifying immediate termination include, but are not limited to: violation of any foreign, federal, state, or local law; non-payment of fees due under Part 5 of this Agreement; breach of this Agreement; violation of the Terms of Service found at [http://www.carbintech.net /carbintech-documents/hosting/tos.aspx](http://www.carbintech.net/carbintech-documents/hosting/tos.aspx) and any written modifications thereof; and violation of any other Carbintech INC policy. Carbintech INC may terminate this Agreement without cause at any time upon thirty (30) days written notice to Customer.

**7. DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, CARBINTECHS, AND ITS OWNERS, EMPLOYEES, AFFILIATES, AGENTS, VENDORS, AND THE LIKE, MAKE NO WARRANTY IN CONNECTION WITH WEB REFINEMENTS HARDWARE OR SERVICES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF TITLE, NON-INGRUMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

**8. LIMITATION OF LIABILITY.** CARBINTECHS, ITS OWNERS, EMPLOYEES, AFFILIATES, AGENTS, VENDORS, AND THE LIKE SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST BUSINESS, LOST DATA OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OR INABILITY TO USE CARBINTECH HARDWARE OR SERVICES. CUSTOMER AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY SHALL BE RETURN OR REDUCTION OF FEES PAYABLE TO CARBINTECH.

#### **9. Customer Indemnity.**

Customer shall defend Carbintech INC against any third party claim, action, suit or proceeding arising as a result of Customer's use Carbintech INC hardware or services and indemnify Carbintech INC for all losses, damages, expenses, and costs incurred by Carbintech INC as a result of a final judgment entered against Carbintech INC in any such claim, action, suit or proceeding.

#### **10. General Provisions.**

##### **10.1 - Governing Law.**

This Agreement will be governed and construed in accordance with the laws of the State of Virginia. Both parties agree to submit to personal jurisdiction in Evington, Virginia, and further agree that any cause of action or dispute arising under this Agreement will be litigated or arbitrated in Evington, Virginia, United States of America.

##### **10.2 - Severability and Waiver.**

If any provision of this Agreement is held invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

##### **10.3 - Relationship of Parties.**

No agency, partnership, joint venture, or employment relationship is created by this Agreement and neither party has the power to bind the other party.