

ProAccess Internet Services, LLC

Terms of Service

The following terms and conditions of service (hereinafter referred to as “Terms”) govern all products and services provided by ProAccess Internet Services, LLC (hereinafter referred to as “ProAccess”) to another party (hereinafter referred to as “Client”), including, but not limited to products and services provided under a ProAccess Internet Services Agreement (hereinafter referred to as “Agreement”). Such Agreement is subject to acceptance by Client without modification of any of the Terms contained herein, which terms may be updated from time to time on the ProAccess website. Please read these Terms carefully before accepting the Agreement. By accepting the Agreement, you agree to become bound by these Terms.

1. Description of Services

ProAccess shall use its best efforts to assist Client with services as described in the Agreement.

2. Charges

- a. ProAccess charges to client shall be in accordance with a signed Internet Services Agreement.
- b. ProAccess reserves the right to change its account rates or services offered, or modify these terms and conditions by notifying Client in writing thirty (30) days in advance of the effective date of the change. Such modifications in services offered or changes in the charges shall not affect the services or charges for work already contracted for and to be provided under any then current signed Agreement, but shall affect only services or charges for any additional work not presently contracted for in the then current Agreement.

3. Payment Obligations

- a. All charges pursuant to Section 2 above shall be paid to ProAccess at least (30) days prior to the period to which the charges apply in accordance with payment terms specified in an accepted Agreement. Prepaid charges shall be non-refundable to Client unless service is terminated by ProAccess for other than cause pursuant to Section 4 below.
- b. ProAccess shall have an obligation to Client to deliver products and services specified in the Agreement during any period paid for by the Client under the terms set forth herein and in the Agreement. At the end of any such period, ProAccess shall have the right to cease provision of products and services without notice and without incurring any liability to Client, unless the Agreement has been extended by payment to ProAccess pursuant to the payment schedule described in (a) above, provided that ProAccess may, at its option, reinstate provision of its products and services upon receipt of a late payment. Payment shall be considered received upon successful bank deposit.
- c. A late fee of 1.5% per month will be charged on balances that are outstanding beyond 30 days from the date payable on the invoice.

4. Right of Review/Approval

ProAccess reserves the right to reasonable review and approval of all HTML documents and associated multimedia files appearing on any of its web servers (hereinafter referred to as “Server”). Such approval shall not be unreasonably withheld. ProAccess will be required to submit written notice to Client of intent to edit, add to or delete material from HTML documents and associated multimedia files comprising the Client’s Internet Presence only if such changes are outside the scope of website content updates or enhancements as provided for in the Agreement. Notice shall be submitted to Client in advance of any proposed changes to Client’s material resulting from such review.

5. **Indemnification**

The Server may only be used by Client for lawful purposes. The transmission of material in violation of federal, state or local regulations and laws is prohibited. This includes but is not limited to the transmission of copyrighted materials or confidential information being maintained as a trade secret by its owner. Client agrees to indemnify and hold harmless ProAccess from any claims and damages resulting from such wrongful use of the Client's Internet Presence by Client or any other person.

6. **Disclaimer and Assumption of Risk**

- a. PROACCESS, ITS SUBSIDIARIES, OFFICERS AND EMPLOYEES MAKE NO REPRESENTATION OR ENDORSEMENT, AND DISCLAIM ALL LIABILITY RELATIVE TO AND ARISING FROM THE USE OF THE INTERNET PRESENCE OR ANY OTHER HTML DOCUMENTS AND ASSOCIATED MULTIMEDIA FILES ON THE SERVER. PROACCESS DOES NOT WARRANT ANY PRODUCT OR SERVICE FOUND ON THE SERVER INCLUDING THE INTERNET PRESENCE AND DOES NOT MAKE ANY GUARANTEE OR WARRANTY OR ASSUME ANY LIABILITY OR RESPONSIBILITY FOR INFORMATION CONTAINED WITHIN OR REFERRED TO BY HTML DOCUMENTS AND ASSOCIATED MULTIMEDIA FILES ON THE SERVER.
- b. PROACCESS DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PROACCESS DISCLAIMS ALL RESPONSIBILITY FOR ANY DAMAGE SUFFERED FROM THE DIRECT OR INDIRECT USE OF ITS SERVICES, THE INTERNET PRESENCE AND THE SERVER WHICH ARE NOT THE DIRECT RESULT OF ITS ACTIONS OR NEGLIGENCE. THIS INCLUDES LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, MIS-DELIVERIES OR SERVICE INTERRUPTIONS CAUSED BY CLIENT'S NEGLIGENCE OR ERRORS OR OMISSIONS. PROACCESS SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR ACCURACY OR QUALITY OF INFORMATION OBTAINED FROM THE SERVER.
- c. USE OF ANY INFORMATION OBTAINED VIA HTML DOCUMENTS AND ASSOCIATED MULTIMEDIA FILES ON THE SERVER AND AFFILIATED INFORMATION IS AT CLIENT'S AND CLIENT'S CUSTOMERS' OWN RISK.
- d. CLIENT EXPRESSLY ACCEPTS PROACCESS' DISCLAIMERS AS SET FORTH IN (a) AND (b) ABOVE AND AGREES TO THE ASSUMPTION OF RISK AS SET FORTH IN (c) ABOVE.

7. **Arbitration**

Any controversy or claim arising out of, relating to or connected with this Agreement, or a breach thereof, which cannot be settled amicably by ProAccess and the Client, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect ("Rules"). Arbitration shall be by a single arbitrator chosen by the parties provided that, if the parties fail to agree on the appointment of a single arbitrator within thirty (30) calendar days from the date a party has made demand for arbitration, then the arbitrator shall be chosen in accordance with the Rules. The decision of the arbitrator shall be final and binding on the parties and any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have no authority to award punitive damages, treble damages, costs and/or attorneys fees, and shall otherwise follow applicable law and the terms of this Agreement to the extent that such terms are consistent with applicable law. All proceedings in arbitration shall be conducted in Albuquerque, New Mexico, or elsewhere as mutually agreed by the parties, and shall be conducted in the English language.

8. **Assignment of Rights**

- a. Client may not assign its rights or obligations under this Agreement without prior written consent of ProAccess.
- b. ProAccess may assign its rights and obligations under this Agreement without the consent of Client to any controlling, controlled by or under common control with ProAccess, or to a successor to all or substantially all of that portion of the business of ProAccess to which this Agreement relates.

9. **Ownership of Electronic DATA/Server**

ProAccess retains ownership and all rights to the Server on which HTML documents and associated multimedia files are stored.

10. **Licensed Products**

A Licensed Product (Licensed Product) includes any web-based application that incorporates a third-party software product component or any other web-based script or software program component that has been custom developed by ProAccess or custom developed for ProAccess by any of its suppliers or outside contractors. Any Licensed Product included within an Agreement is provided solely under a non-transferable, revocable license that is granted to Client for its use during the term period of the Agreement, unless otherwise stated to the contrary within the Terms of the Agreement.

11. **Termination**

The Agreement may be terminated by either party upon ninety (90) days written notice. Such notice shall be delivered via certified mail, return receipt required, to the contact address listed on this Agreement.

12. **Waiver of Breach**

The waiver of a breach of any term, covenant or condition contained in these Terms or in the Agreement shall not be deemed to be a waiver of such term, covenant or condition for any subsequent breach of the name.

13. **Applicable Law**

This Agreement shall be enforced and interpreted under the laws of the State of New Mexico.

14. **Notices**

All notices or communications given or sent to ProAccess or Client shall be made by registered or certified mail, postage prepaid, return receipt requested, addressed as set forth in the Agreement, provided that either party may change its contact information for notice by such notice to the other party. All such notices and communications between the parties shall be sent to the parties at the addresses listed in the Agreement.

15. **Severability**

If any provision of these Terms or the Agreement shall be held unenforceable or in conflict with any law governing these Terms or the Agreement, the validity of the remaining portions hereof shall not be affected thereby.

16. **Entire Agreement**

These Terms and the Agreement contains all of the agreements, representations and understandings of the parties hereto and supersedes and replaces any and all previous understandings, commitments or agreements, oral or written.