



Surpasshosting.com, LLC • 189 South Orange Avenue, Suite 1500 South, Orlando FL 32801 •
Help Desk: <https://desk.surpasshosting.com> • Fax: (407) 386-6513 • www.surpasshosting.com
Email: dedi.scan@surpasshosting.com

Internet Co-Location Agreement

Customer instructions:

To proceed with account setup, please read this server co-location agreement document in full, then print, fill out, and sign the 'Signature Page' and 'Server Description Page' (the last two pages at the end of this document) and return by email or fax to our office. Your documents will be reviewed and once approved your account will be setup shortly where you will be sent your account details to the contact information you have provided.

This Internet Co-location Agreement (“Agreement”) is entered into as of the Effective Date by and between Surpasshosting.com, LLC, a Florida Limited Liability Company (“Surpasshosting”) and the Customer identified on the signature page of this Agreement (“Customer”).

WHEREAS:

- A. Surpasshosting is a service provider of telecommunication services using wide area computer networks including, without limitation, the Internet;
- B. Surpasshosting has the right to use and sell certain bandwidth to Customer and to connect Customer’s server to the Internet;
- C. Customer wishes to have its server connected to the Internet and to purchase the use of bandwidth therefore from Surpasshosting;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Definition

For the purpose of this agreement the following terms shall have the following meanings respectively:

- (a) “Bandwidth Overuse” – usage of bandwidth by Customer in excess of the bandwidth block purchased hereunder;
- (b) “Internet Connection” – connection of Customer’s server to the Internet by Surpasshosting;
- (c) “Kbps” – kilobits per second of bandwidth usage;
- (d) “Mbps” – megabits per second of bandwidth usage;
- (e) “Price” – the price payable by Customer to Surpasshosting each month while Internet Connection exists, as set forth and selected by Customer in the online help desk ticket where initial communication has been established (<https://desk.surpasshosting.com>) and co-location Service Plans have been outlined to Customer.
- (f) “Server Placement” – placement of Customer’s computer server at a location where it is capable



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of being connected to the Internet;

(g) “Term” – Every one month commencing on the 1st day of the proceeding month from the date of initial Internet Connection.

(h) “Service Plan” - Service Plan by which Surpasshosting will render service to Customer based on an automatically renewed monthly subscription which commences upon execution of this agreement and/or establishment of connection of service and terminated upon Surpasshosting's confirmed receipt of client's written cancellation request.

2. Internet Connection

Surpasshosting agrees to provide Customer with Server Placement, IP addresses, and Internet Connection for the Term, based on the Service Plan selected by Customer in the help desk ticket where initial communication was established and co-location service Service Plans outlined to Customer, at the Price applicable to such Service Plan.

3. Payment Guaranty, Late Fees, Subscription Renewal, Default of Payment, and Refunds

Billing will begin on the date Internet Connection is established. Customer agrees and HEREBY PERSONALLY GUARANTIES PAYMENT to Surpasshosting for the Price applicable to the Service Plan selected by Customer, including all services that Surpasshosting has rendered to Customer, where the monthly payment is to be prepaid before or on the first day of every month. Furthermore, Customer agrees to pay for any products Customer orders or has incurred by service usage (e.g. Bandwidth Overuse fees) throughout the term of subscribed Service Plan. Your account may be deactivated without notice if payment is past due, regardless of the dollar amount, where any open invoice older than five days (5) is also subject to a late fee in the amount of \$35.00 USD.

Unless you notify us of your decision to terminate your subscription, your subscription will automatically renew at the end of each subscription Term. Your renewed subscription will have the same duration as the subscription being renewed (e.g. one month, one year, etc.). At the time of renewal, your credit card will be charged our then-current fees for the applicable subscription, provided that if the fee for your renewal Service has increased, we will notify you at your designated email address at least five (5) days prior to renewal so that you have an opportunity to elect not to renew. If Customer defaults in payment for whatever reason (due to client's inability or failure to receive notices from Surpasshosting, out of date contact information, etc.), Surpasshosting reserves the right to succeed as owner of the co-located equipment on site and Customer agrees to accept such succession as collateral payment for any open balance and debt Customer owes to Surpasshosting for rendered services throughout the term of the subscribed Service Plan. Any remaining debt not paid will be forwarded to a collections agency for proper collection. In good faith, Customer will be given the opportunity to resolve any billing issues with prior notification.

All fees paid and charges made prior to termination as provided herein, including any advance charge



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or payment for the subscription Term during which you terminate your subscription, are nonrefundable. Furthermore, termination of your subscription shall not relieve you of any obligations to pay accrued invoices/charges.

4. Bandwidth Usage and Overage Fees

Customer is given access to bandwidth graphs which are updated in five minute intervals. These graphs are located in the online client access area referred as D.E.C.C. (DimeNoc Engineering Control Center – <https://decc.surpasshosting.com>) of which login details will be provided to Customer once the account is established. All bandwidth usage, where usage graphs of the Customer's server is provided in D.E.C.C., is measured based upon 95th percentile metering and billing of overage fees is exclusively calculated from the provided graph readings.

Co-location Service Plans include usage of a certain amount of bandwidth in a 30-day calendar month. If your monthly usage exceeds the bandwidth transfer rate that your Service Plan includes within a 30-day billing cycle, you will be billed for Bandwidth Overuse exceeding the amount of bandwidth your Service Plan includes. Customer is liable for any bandwidth overuse and subsequent overuse fees and agrees to pay for such overages at the rate of \$75.00 per 1 Mbps of bandwidth.

Example calculation:

Bandwidth Allocation: 4.5 Mbps

Bandwidth used for x month = 5.0 Mbps (based 95th percentile metering)

Bandwidth overages = 5.0 Mbps - 4.5 Mbps = 0.5 Mbps

0.5 Mbps x \$75.00/Mbps = \$37.50

If you anticipate high bandwidth usage, please contact our sales department via our help desk for further information on the availability of other Service Plans with higher bandwidth allocations for more cost-effective rates.

Note: The rate of 1 Mbps of continuous data transfer in a 30 day period is approximately 320 GB of transferred data bandwidth. Further in-depth information on 95th percentile metering may be found on the following site: <http://www.seanadams.com/95/>

5. Customer's Warrant as to Legality of Data

Surpasshosting is not responsible for the type of data conveyed via Customer's server. Customer warrants to Surpasshosting that all data conveyed via Customer's server will comply with the laws of the United States of America and comply with the terms of service which is located on the following web page: <http://www.surpasshosting.com/policies/tos/>

6. Surpasshosting's Name not to be Used



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Customer shall not use the Surpasshosting name or any derivative thereof in any literature or advertising in any form without the prior written consent of Surpasshosting.

7. Force Majeure, Representations and Warranties, and Indemnity

Neither party is responsible for failure or delay in performance caused by acts of God, strikes, floods, fire, war, public enemy, electrical or equipment failure, failure of third parties or any event beyond its reasonable control.

The Customer agrees that the use of the Co-location Service is entirely at the Customer's own risk. The Service is made available on an "as is", "where is", and "with all faults" basis without warranties of any kind, either expressed or implied, constructive, or statutory, including, without limitation, any implied warranties of merchantability, non-infringement or fitness for a particular purpose. Surpasshosting makes no guarantee of availability of service and reserves the right to change, withdraw, suspend, or discontinue any functionality or feature of the Surpasshosting service. In no event will Surpasshosting be liable for any damages, including, without limitation, direct, indirect, incidental, special, consequential, or punitive damages arising out of the use of or inability to use Surpasshosting's services or any content thereon. This disclaimer applies, without limitation, to any damages or injury, whether for breach of contract, tort, or otherwise, caused by any failure of performance; error; omission; interruption; deletion; defect; delay in operation or transmission; computer virus; file corruption; communication-line failure; network or system outage; or theft, destruction, unauthorized access to, alteration of, or use of any record.

The provision of Internet Connection at any particular bandwidth rate does not constitute a guarantee of the end to end throughput or bandwidth available to Customer. Surpasshosting will provide support for any hardware provided by it for the Internet Connection, and should any problems arise with Surpasshosting's hardware or software it will take reasonable action to rectify the situation and will keep Customer informed of the progress. If Customer's server or the data transmitted via such server is in some way harmful to the network, Surpasshosting reserves the right to disconnect the Internet Connection until the problem is resolved.

Each party agrees to indemnify and hold harmless the other from and against loss, suit, damage or claim, including reasonable attorneys' fees and costs, arising out of or in connection with the co-location service Service Plan.

8. Termination by Surpasshosting

Surpasshosting reserves the right to terminate this Agreement:

- (a) without reason or cause by giving 5 days notice in writing of its intention to terminate;
- (b) forthwith if Customer defaults in making the payments required of it hereunder.

9. Termination by Customer



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Customer may terminate this Agreement and service Service Plan by giving five (5) days prior written notice before the proceeding billing date (1st day of every month) to Surpasshosting of Customer's intention to terminate. If Customer fails to provide notice within this time frame, Customer will be liable and agrees to complete payment of the proceeding month as invoiced accordingly.

10. Access to Server

Surpasshosting shall grant to Customer reasonable access to the premises where Customer's server is located, provide that such access shall be during normal business hours and shall be arranged by Customer with Surpasshosting not later than 24 hours before such access.

11. Agreement Supersedes

The parties acknowledge and agree that this Agreement represents a composite of all previous agreements reached to date and that hereafter this Agreement is the only agreement between the parties with respect to the rights and obligations contemplated by this Agreement, with the exception of the general terms of service – <http://www.surpasshosting.com/content/policies.php>, and shall supersede and replace any discussion, letter or form of agreement, oral or written, which may exist as of the date of execution and delivery of this Agreement.

12. Applicable Law

This Agreement shall be construed and enforced in accordance with and the rights of the parties shall be governed by the laws of the State of Florida, USA. Each of the parties hereby irrevocably attorneys to the jurisdiction of the courts of the State of Florida.

13. Notices

All notices, payments, statements or other documents that any party to this Agreement is required to or elects to give to the other will be in writing and will be delivered in one of the following ways:

- (a) by Federal Express
- (b) by facsimile transmission
- (c) by e-mail

In the event that the contact email should changed at any time during the course of the subscribed Service Plan, Customer agrees to update Surpasshosting immediately of such changes so appropriate communication between both parties can continue without delay or interruption.

14. Amendment

This agreement may be modified at any time by Surpasshosting for any reason or in order to comply with any local, national or international laws, rules or regulations, with notice of such modification to Client, which notice may be sent to Client by E-Mail, fax, or regular mail.

**Internet Co-Location Agreement - Signature Page
Customer Information:**



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Customer Name:	
Address:	
City, State & Zip:	
Primary Phone #:	Secondary Phone #:
Primary Email address:	Secondary Email address:

THIS AGREEMENT IS A LEGALLY BINDING AGREEMENT BETWEEN CUSTOMER (INCLUDING ANY SUBSCRIBER, OR PURCHASER OF ANY SURPASSHOSTING SERVICE REQUIRING PAYMENT OF A FEE) AND SURPASSHOSTING.COM, LLC. BY SIGNING BELOW, THE CUSTOMER WARRANTS TO SURPASSHOSTING THAT HE/SHE IS OF EIGHTEEN (18) YEARS OF AGE OR OLDER AND IS INDICATING THAT YOU, THE CUSTOMER, HAVE READ THIS CO-LOCATION AGREEMENT IN ITS ENTIRETY, THAT YOU UNDERSTAND IT, AND THAT YOU CONSENT TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS, WHERE THIS AGREEMENT SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO YOUR SUBSCRIPTION TO THE SURPASSHOSTING SUBSCRIPTION SERVICE(S) THAT YOU HAVE SELECTED, AND YOUR USE OF AND ACCESS TO ANY SERVICE PROVIDED BY SURPASSHOSTING.COM, LLC. THROUGH THE SURPASSHOSTING SUBSCRIPTION SERVICE OR THE SURPASSHOSTING APPLICATION. AS USED HEREIN, "SERVICE(S)" INCLUDES ANY VERSION OF THE SURPASSHOSTING SUBSCRIPTION SERVICES OR OTHER SERVICES PROVIDED BY SURPASSHOSTING.COM, LLC. THROUGH THE SURPASSHOSTING SUBSCRIPTION SERVICE OR THE SURPASSHOSTING APPLICATION.

Signature:	Date:
Printed Name:	Help Desk Ticket ID - (ex: ABC-123456):