

Hosting



Virtual Server Agreement

READ THESE TERMS CAREFULLY BEFORE USING THE SERVICES DESCRIBED BELOW. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT ACCESS OR OTHERWISE USE THESE SERVICES. YOUR CONTINUED USE OF THE SERVICES INDICATES YOUR ACKNOWLEDGMENT THAT YOU HAVE READ AND ACCEPTED THESE TERMS AND CONDITIONS.

The following Virtual Server Agreement (“Agreement”) is between you (“Client”) and Dabisoft, Inc., a New York corporation.

Dabisoft, Inc. is in the business of offering, among other things, Internet access services pursuant to virtual server plans (“Plans”) containing various features as more specifically set forth in each Plan. Client desires to engage Dabisoft, Inc., and Dabisoft, Inc. desires to be engaged by Client, in accordance with the terms and conditions as set forth below. Dabisoft, Inc. may amend this Agreement at any time by posting the amended Agreement on its web site and the effective date of any such amendment will be the date on which the amended Agreement is so posted. In addition, Dabisoft, Inc. will e-mail Client a notice of the amended Agreement. Without limiting the generality or effect of the foregoing, Dabisoft, Inc. may also add, delete or modify some or all of its Services at any time in its sole discretion.

By accepting the terms and conditions of this Agreement, Client (i) represents and warrants that he or she is at least 18 years of age and is the authorized representative of the organization or entity that he or she purports to represent, and (ii) agrees to provide true, accurate, current and complete information about Client as prompted in the account registration process. If any information provided by Client is untrue, inaccurate, not current or incomplete, Dabisoft, Inc. has the right to terminate Client’s account and refuse any and all current or future use of the Services (as defined below).

1. Services.

1.1 Virtual Server. Dabisoft, Inc. agrees to provide Client with: (i) space on one of Dabisoft, Inc.’s servers (“Virtual Server”) to host a site on the Internet (“Web Site”), (ii) a license to use some of Dabisoft, Inc. proprietary software (“Software”), and (iii) various other services to facilitate the creation and maintenance of the Web Site (collectively, “Services”) as more specifically set forth in Client’s Plan and this Agreement. Dabisoft, Inc. shall provide the Services so that the Web Site is accessible to third parties via the World Wide Web portion of the Internet as specified herein. Except as expressly provided herein, Client agrees that Dabisoft, Inc. is responsible only for providing the Services provided in Client’s Plan and this Agreement, and Dabisoft, Inc. is not responsible for providing any other services or tasks.

1.2 Availability of Web Site. The Web Site is generally accessible to third parties via the Internet twenty-four hours a day, seven days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of Services due to causes beyond the control of Dabisoft, Inc. or which are not reasonably foreseeable by Dabisoft, Inc., including but not limited to interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures. See Section 6.2 for description of 99.5% Warranty and limitation on liability.

2. Client Obligations

2.1 Client shall provide to Dabisoft, Inc. all materials comprising the Web Site, including, but not limited to, any images, audio clips, video clips or text (the "Client Content"), which shall be in a correct format (as specified by Dabisoft, Inc.), including, but not limited to, HTML. Dabisoft, Inc. reserves the right, in its sole discretion, to exclude or remove from the Web Site any Client Content for any of the following reasons: (i) Client Content is not Server Ready, (ii) CGI scripts or programs consume an unreasonable amount of Central Processing Unit ("CPU") usage or Random Access Memory ("RAM"), (iii) Dabisoft, Inc. has received a significant number of complaints regarding Client's failure to be reasonably accessible to Client's customers or timely fill orders, (iv) Client has become the subject of a government complaint or investigation, or (v) any other reason which may violate or infringe any law or third party rights or which otherwise may potentially expose Dabisoft, Inc. to civil or criminal liability or public ridicule, provided that such right shall not place an obligation on Dabisoft, Inc. to monitor or exert editorial control over the Web Site.

2.2 Client represents and warrants that: (i) Client has the power and authority to perform its obligations under this Agreement, (ii) Client has the requisite level of knowledge in the use of Internet languages, protocols and software to utilize the Services provided by Dabisoft, Inc., (iii) Client has secured all required authorization(s) necessary for hypertext links to third party web sites, (iv) Client holds all necessary licenses from the required jurisdictions to engage in the advertising and sale of any goods and services which may be offered on the Web Site, (v) the Client Content does not and will not contain any content, materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of a third party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, and (vi) that Client owns the Client Content or otherwise has the right to place the Client Content on the Web Site.

2.3 Client agrees to not utilize Dabisoft, Inc.'s Services for any activities that: (i) constitute or encourage a violation of any applicable law or regulation, including but not limited to the sale of illegal goods or the violation of export control or obscenity laws, (ii) defame, impersonate or invade the privacy of any third party or entity, (iii) infringe the rights of any third party, including but not limited to the intellectual property, business, contractual or fiduciary rights of others, (iv) involve the display, sale, distribution or creation of any pornographic, obscene or otherwise offensive goods, services, material or ideas or promote violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age, (v) modify any Dabisoft, Inc. copyright notices or scripts without obtaining Dabisoft, Inc.'s prior written consent, (vi) provide mirroring service for other web sites, (vii) the primary purpose is non-http compatible file distribution, including but not limited to the distribution of the following file types: .arj, .mp3, .exe, .tar, .rar, or .zip, (viii) are in any way connected with trolling, mailbombing, IRC Bots, Game-emulators, ROMs or the transmission of "junk mail," "spam," the unsolicited mass distribution of e-mail or with any unethical marketing practices. PLEASE REFERENCE SECTION 5.4 OF THIS AGREEMENT FOR SPECIFIC TERMINATION FEES AND PROCEDURES FOR CLIENT'S VIOLATION OF THIS SECTION.

2.4 Mailing Lists. Dabisoft, Inc. permits clients to send mailings to subscribers of their own mailing list. Such mailings must have explicit instructions to the recipient on how to remove his/her name from the list, and all requests to do so must be honored immediately. Client agrees not to send mailings to lists provided by an outside agency or individual. Client further agrees not to provide mailing list services to others. Due to the nature of the Virtual Server, Dabisoft, Inc. requests that all mailing lists be sent during the hours of 1:00 am and 5:00 am, Central Time. Dabisoft, Inc. reserves the right to terminate a client's mailing program, whether provided by Dabisoft, Inc. or not, immediately and without notification to client if said list causes a problem, in Dabisoft, Inc.'s sole discretion, with the e-mail services of other clients. Dabisoft, Inc. also reserves the right to forbid a client from utilizing any mail-sending program that jeopardizes the mail services of other clients. Due to the consumption of system resources and overloading of the e-mail server, Dabisoft, Inc. forbids the use of Gossamer Links program by any of its clients.

3. License and Proprietary Rights.

3.1 Software License. Dabisoft, Inc. hereby grants Client a non-exclusive, non-transferable license to use the Software in object code form only on a server controlled by Dabisoft, Inc. for the sole purpose of creating and maintaining the Web Site. Client is not being granted any right to copy the Software, to use it on computers other than as provided in this Agreement or utilize any trademarks or service marks of Dabisoft, Inc. **CLIENT MAY NOT USE WEB PAGES OR PARTS OF WEB PAGES GENERATED BY MEANS OF THE SOFTWARE ON ANY SERVER OTHER THAN THE VIRTUAL SERVER.** Client also acknowledges and agrees that the Software is intended for access and use by means of web browsing software, and that Dabisoft, Inc. does not commit to support any particular browsing platform. Dabisoft, Inc. reserves the right at any time to revise and modify the Software, release subsequent versions thereof and to alter features, specifications, capabilities, functions, and other characteristics of the Software, without notice to Client. If any revision or modification to the Software materially changes Client's ability to conduct business, Client's sole remedy is to terminate the Agreement pursuant to Section 5 regarding termination of service.

3.2 Intellectual Property. All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Dabisoft, Inc. under this Agreement, and any know-how, methodologies, equipment, or processes used by Dabisoft, Inc. to provide the Services to Client, including, without limitation, all copyrights, trademarks, patents, trade secrets, any goodwill associated therewith, and any other proprietary rights inherent therein and appurtenant thereto (collectively "Dabisoft, Inc. Materials") shall remain the sole and exclusive property of Dabisoft, Inc. To the extent, if any, that ownership of the Dabisoft, Inc. Materials does not automatically vest in Dabisoft, Inc. by virtue of this Agreement or otherwise, Client hereby transfers and assigns to Dabisoft, Inc. all rights, title and interest which Client may have in and to the Dabisoft, Inc. Materials. Client acknowledges and agrees that Dabisoft, Inc. is in the business of providing Internet access services, and that Dabisoft, Inc. shall have the right to provide services to third parties which are the same or similar to the Services provided to Client, and to use or otherwise exploit any Dabisoft, Inc. Materials in providing such services.

3.3 Proprietary Rights of Client. As between Client and Dabisoft, Inc., Client Content shall remain the sole and exclusive property of Client, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights. Except as provided in this Section 3.3, nothing in this Agreement shall be construed to grant Dabisoft, Inc. any ownership right in, or license to, the Client Content provided by Client to Dabisoft, Inc. Client hereby grants to Dabisoft, Inc. a non-exclusive, worldwide, royalty-free license for the Initial Term and any Renewal Term (as those terms are hereinafter defined) to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use Client Content as necessary to render the Services to Client under this Agreement.

4. Fees and Taxes

4.1 Client shall pay Dabisoft, Inc. a setup fee (if any) and monthly fee as set forth in the Dabisoft, Inc. fee schedule for Client's corresponding Plan. All such fees due Dabisoft, Inc. shall be received at Dabisoft, Inc. by 2:00 p.m. on the date due ("Payment Date").

4.2 Payments to Dabisoft, Inc. may be made by Credit Card (as defined below), check or money order. All such fees are payable in U.S. dollars only. Dabisoft, Inc. will not accept international checks in foreign currency. In the event a check is returned as un-payable, Client will be assessed a \$25.00 returned check fee. Client will be sent a suspension of Services e-mail that will grant Client fourteen (14) days to make payment.

4.3 Dabisoft, Inc. accepts payment via MasterCard, Visa, and American Express ("Credit Cards"). Payment by Credit Card includes the authorization to charge all future recurring fees and charges to the Credit Card on file with Dabisoft, Inc. If Client's Credit Card is denied, for any reason, Client will be sent a notice by e-mail. If Dabisoft, Inc. does not receive payment by the Payment Date, Dabisoft, Inc. may make one final attempt to charge Client's Credit Card on or around eight (8) days following the Payment Date. If payment

is not secured by the Payment Date, Client will be sent a Suspension of Services e-mail which will grant Client fourteen (14) days to pay all fees due Dabisoft, Inc.

4.4 Failure of Client to fully pay any fees on or before the Payment Date shall be deemed a material breach of this Agreement, justifying suspension of the performance of the Services by Dabisoft, Inc., the immediate removal of all Client Content from the Virtual Server and will be sufficient cause for immediate termination of this Agreement by Dabisoft, Inc. Any such suspension does not relieve Client from paying past due fees plus interest thereon at a rate of 1.5% per month or the maximum allowable rate under applicable law, and in the event of collection enforcement, Client shall be liable for any costs associated with such collection, including, but not limited to, legal costs, attorneys' fees, court costs and collection agency fees.

4.5 These fees are exclusive of any and all local sales, use, value added, excise, transfer, privilege, duty and any other taxes or duties, whether international, national, state or local, however designated or assessed with respect to the Services provided under this Agreement; excluding, income taxes on profits which may be levied against Dabisoft, Inc. Any such taxes shall be itemized for Client.

5. Term, Termination & Renewal.

5.1 Term. Upon acceptance by Dabisoft, Inc., this Agreement shall remain in effect for the time frame set forth in the Client's Plan ("Term"), unless otherwise terminated in accordance with this Agreement. 5.2 Termination for Breach. Except as otherwise provided herein, either party may terminate the Agreement on fifteen (15) days notice if the other party has materially breached or is otherwise not in compliance with any provision of the Agreement, and such breach or noncompliance is not cured within such fifteen (15) day period. Dabisoft, Inc. reserves the right to immediately suspend any access to the Site until such breach or noncompliance is cured.

5.3 Termination for Convenience. Either party may terminate the Agreement for any reason with thirty (30) days written notice to the other party. In the event of termination under this section by Client, Client shall not be entitled to a refund of any fees paid for the current Term. In the event of termination under this section by Dabisoft, Inc., Client shall be entitled to a pro-rata refund of the fees paid during the current Term, but only in the event that Client was not in breach of the Agreement at the time notice of termination was given by Dabisoft, Inc.

5.4 Termination for Breach of Section 2.3. Notwithstanding the foregoing, Dabisoft, Inc. may immediately terminate this Agreement and remove Client's Web Site from the Virtual Server if it is determined, in Dabisoft, Inc.'s sole discretion, that Client has breached Section 2.3 of the Agreement. Any termination under this Section 5.4 shall take effect immediately and Client expressly agrees that it: (i) shall not have any opportunity to cure, (ii) shall not be entitled to a refund of any fees paid to Dabisoft, Inc., and (iii) shall promptly pay a \$250.00 clean-up / disconnection fee to Dabisoft, Inc.

5.5 Renewal. The Term of this Agreement shall automatically be renewed for the same Term as set forth in the Client's Plan, unless prior to fifteen (15) days in advance of the end of the Term, Client either: (i) submits disconnect authorization, or (ii) faxes a cancellation request to (800) 862-0445, containing the account name, password, reason for cancellation and signature of Client.

6. Dabisoft, Inc. Limited Warranties.

6.1 30-Day Money Back Warranty. Dabisoft, Inc. hereby extends an unconditional money-back guarantee to Client during the first thirty (30) days of the initial term of the Client's Plan (3-Month Plans only), beginning upon completion of the setup of Client's Plan. The 30-Day Money Back Warranty is only available on Dabisoft, Inc.'s 3-Month Plans. Client shall provide Dabisoft, Inc. with written notice of

Client's desire to terminate Services prior to the expiration of the thirty days. The written cancellation notice shall entitle the Client to a refund of any monies paid, including setup fees incurred by Dabisoft, Inc. But does not include the costs incurred by client of software development, graphic design, or website development.

6.2 99.5% Uptime Warranty. Subject to the limitations contained herein, Dabisoft, Inc. hereby warrants that the following services will have an average monthly uptime of no less than 99.5% as determined exclusively by the availability of http, ftp, SMTP and POP3 services. The month begins on the first day of each month and continues until the last day of that month. In the event of any loss or interruption of Services resulting in less than 99.5% uptime and which is due to (i) causes other than scheduled maintenance and required repairs, (ii) causes beyond the control of Dabisoft, Inc., or (iii) causes which are not reasonably foreseeable by Dabisoft, Inc., including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures, Client shall receive, at Dabisoft, Inc.'s sole discretion, an exclusive liability for any loss or interruption of Services shall be, a credit equal to one month's Services of the Client's present Plan fees.

7. Warranty Disclaimer; Limitation on Liability & Indemnity

7.1 Warranty Disclaimer. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 6, DABISOFT, INC. MAKES NO WARRANTIES HEREUNDER, AND DABISOFT, INC. EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DABISOFT, INC.'S AGENTS HAVE NO AUTHORITY TO GIVE SUCH WARRANTIES ON BEHALF OF DABISOFT, INC.

7.2 Limitation on Liability. IN NO EVENT SHALL DABISOFT, INC. BE LIABLE TO CLIENT OR TO CUSTOMERS OF CLIENT FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR NONCONTRACTUAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT AND THE SERVICES PROVIDED BY DABISOFT, INC., INCLUDING WITHOUT LIMITATION, RELATED TO THE PERFORMANCE OR BREACH THEREOF, EVEN IF DABISOFT, INC. HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. DABISOFT, INC.'S LIABILITY, IF ANY, TO CLIENT OR TO THE CUSTOMERS OF CLIENT HEREUNDER SHALL IN NO EVENT EXCEED THE TOTAL AFTER TAX PROFITS OF DABISOFT, INC. UNDER THIS AGREEMENT. IN NO EVENT SHALL DABISOFT, INC. BE LIABLE TO CLIENT OR TO CUSTOMERS OF CLIENT FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OR DELAY OF DABISOFT, INC. IN THE DELIVERY OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DELAYS CAUSED BY ACTS OF GOD, FIRE, WAR, RIOTS, STRIKES, QUARANTINES OR EMBARGOES.

7.3 Indemnity. Client agrees to indemnify, defend and hold harmless Dabisoft, Inc., its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim that: (i) if true, would constitute a breach of any of Client's representation, warranties or agreements hereunder, (ii) arises out of the negligence or willful misconduct of Client, or (iii) any of the Client Content to be provided by Client hereunder or other material on the Web Site infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets and/or licenses.

8. Miscellaneous Provisions.

8.1 Nature and Survival of Representations and Warranties. All statements contained in this Agreement delivered by any party hereto shall be deemed representations and warranties hereunder. All representations, warranties and agreements made in and under this Agreement or pursuant hereto shall survive the termination of this Agreement.

8.2 Binding Nature of Agreement; Assignment. Except as otherwise provided herein, all the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Client may not assign or transfer its rights or obligations under or interest in this Agreement without the prior written consent of Dabisoft, Inc. Dabisoft, Inc. may, in its sole discretion, assign or transfer its rights or obligations under or interest in the Agreement.

8.3 No Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.

8.4 Publicity. Dabisoft, Inc. may refer to the name of the Client, the Client's product(s) or the business in which the product(s) are used in their customer listings, on its web site, in a customer profile, or in a press release, without the consent of Client.

8.5 Governing Law; Venue. This Agreement shall be governed by and shall be construed, interpreted, and enforced in accordance with the laws of the State of New York, without reference to principles of conflicts of law. The parties agree that the sole and exclusive venue for any disputes arising hereunder shall be in a state or federal trial court located in the State of New York.

8.6 Alteration. No alteration, modification, or change of this Agreement shall be valid unless made in writing and executed by the parties hereto.

8.7 Attorney's Fees. In the event of any litigation between the parties hereto arising from or related to a party's performance under or breach of this Agreement, the prevailing party in any such action shall be entitled to and shall receive from the adverse party, in addition to any relief granted by a court of law, their reasonable attorney's fees and other costs and expenses incurred in prosecuting or opposing the prosecution of such action, as the case may be.

8.8 No Waiver. No failure or delay by any party hereto in exercising any right, power, or privilege hereunder (and no course of dealing between or among any of the parties) shall operate as a waiver of any right, power, or privilege hereunder. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any right, power, or privilege shall preclude the further or full exercise thereof.

