

The Digital Academy Master Subscription / Service Agreement

This **Software Service Agreement** (AGREEMENT) is made by and between The Digital Academy (TDA) an Ohio corporation (TDA), and the Customer executing The Digital Academy Services Order Form (Customer).

1. TDA Services

- 1.1. **Provision of Purchased Services.** TDA will (a) make the Services and Content available to Customer pursuant to this Agreement and the applicable Digital Academy Services Order Form (as incorporated herein by reference), (b) provide Support as outlined in the Services Order (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which TDA shall give at least 8 hours electronic notice and which TDA shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Eastern time), and (ii) any unavailability caused by circumstances beyond TDA's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving TDA employees), Internet service provider failure or delay, or denial of service attack.
- 1.2. **Protection of Customer Data.** TDA will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by TDA personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 5.3 (Compelled Disclosure) below, or (c) as Customer expressly permit in writing.
- 1.3. **TDA Personnel.** TDA will be responsible for the performance of TDA personnel (including TDA employees and contractors) and their compliance with TDA obligations under this Agreement, except as otherwise specified herein.

2. USE OF SERVICES AND CONTENT

- 2.1. **Subscriptions.** Unless otherwise provided in the applicable Services Order, (a) Services and Content are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.
- 2.2. **Usage Limits.** Services and Content are subject to usage limits, including, for example, the quantities specified in the Services Order Form. If Customer exceed a contractual usage limit, TDA may work with Customer to seek to reduce Customer usage so that it conforms to that limit. If, notwithstanding TDA efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer agrees to execute a Services Order for additional quantities of the applicable Services or Content promptly upon TDA request, and/or pay any invoice for excess usage in accordance with Section 3.2 (Invoicing and Payment).
- 2.3. **Acceptable Use Policy.** Customer agrees to abide by TDA's Acceptable Use Policy (Current Version Included as Appenix A). TDA reserves the right to make changes to this Acceptable Use Policy from time to time at its sole discretion. Customer is responsible for complying with the terms of any such modified Acceptable Use Policy. Customer may make regular requests by email to support@digitalacademy.org to inquire about changes to TDA's acceptable use policy.
- 2.4. **Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify TDA promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with the Documentation and applicable laws and government regulations.

- 2.5. **Usage Restrictions.** Customer will not (a) use a Service in violation of TDA’s Acceptable Use Policy, (b) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than Customer or Customer Users (c) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit (d) copy a Service or any part, feature, function or user interface thereof, (e) copy Content except as permitted herein or in a Services Order Form or the Documentation, (f) access any Service or Content in order to build a competitive product or service, or (g) reverse engineer any Service (to the extent such restriction is permitted by law), (h) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering.
3. **FEES AND PAYMENT FOR PURCHASED SERVICES**
- 3.1. **Fees.** Customer agrees to pay all fees specified in the Services Order Forms. Except as otherwise specified herein or in a Services Order Form, (i) fees are based on Services and Content purchased and not actual usage, (ii) payment obligations are noncancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- 3.2. **Invoicing and Payment.** Charges for services are listed on the Services Order Form. Charges shall be made in advance annually, or in accordance with the frequency listed on the Services Order Form. Unless otherwise stated in the Services Order Form, invoiced charges are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to TDA and notifying TDA of any changes to such information.
- 3.3. **Overdue Charges.** If any invoiced amount is not received by TDA by the due date, then without limiting TDA rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) TDA may condition future subscription renewals and Services Order Forms on payment terms shorter than those specified in Section 3.2 (Invoicing and Payment).
- 3.4. **Suspension of Service and Acceleration.** If any amount owing by Customer under this or any other agreement for TDA services is 30 or more days overdue. TDA may, without limiting TDA other rights and remedies, accelerate Customer unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend TDA services to Customer until such amounts are paid in full. TDA will give Customer at least 10 days’ prior notice that Customer account is overdue, in accordance with Section 10.2 (Manner of Giving Notice), before suspending services to Customer.
- 3.5. **Payment Disputes.** TDA will not exercise its rights under Section 3.3 (Overdue Charges) or 3.4 (Suspension of Service and Acceleration) above if Customer is disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 3.6. **Future Functionality.** Customer agree that Customer purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by TDA regarding future functionality or features.
4. **PROPRIETARY RIGHTS AND LICENSES**
- 4.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, TDA Reserves all of its right, title and interest in and to the Services and Content, including all of TDA related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 4.2. **License by TDA to Use Content.** TDA grants to Customer a worldwide, limited-term license, under TDA applicable intellectual property rights and licenses, to use Content acquired by Customer pursuant to the Services Order Forms, subject to those Services Order Forms, this Agreement and the Documentation.
- 4.3. **License by Customer to Host Customer Data and Applications.** Customer grants TDA a worldwide, limited term license to host, copy, transmit and display Customer Data as necessary for TDA to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, TDA acquires no right, title or interest from Customer or Customer licensors under this Agreement in or to Customer Data.

- 4.4. **License by Customer to Use Feedback.** Customer grants to TDA a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of the Services.
5. **CONFIDENTIALITY**
- 5.1. **Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information includes Customer Data; TDA Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Services Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 5.2. **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Services Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this Section 5.2.
- 5.3. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.
6. **REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**
- 6.1. **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 6.2. **TDA Warranties.** TDA warrant that (a) this Agreement, the Services Order Forms and the Documentation accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) TDA will not materially decrease the overall security of the Purchased Services during a subscription term, (c) the Purchased Services will perform materially in accordance with the applicable Documentation, and (d) the Purchased Services and Content will not introduce Malicious Code into Customer systems. For any breach of an above warranty, Customer exclusive remedies are those described in Sections 9.3 (Termination) and 9.4 (Refund or Payment upon Termination).

- 6.3. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

7. MUTUAL INDEMNIFICATION

- 7.1. **Indemnification by TDA.** TDA will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party’s intellectual property rights (a “Claim Against Customer”), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer, provided Customer (a) promptly gives TDA written notice of the Claim Against Customer, (b) gives TDA sole control of the defense and settlement of the Claim Against Customer (except that TDA may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives TDA all reasonable assistance, at TDA expense. If TDA receives information about an infringement or misappropriation claim related to a Service, TDA may in TDA discretion and at no cost to Customer (i) modify the Service so that it no longer infringes or misappropriates, without breaching TDA warranties under Section 6.2 (TDA Warranties), (ii) obtain a license for Customer continued use of that Service in accordance with this Agreement, or (iii) terminate Customer subscriptions for that Service upon 30 days’ written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim against Customer arises from Content or Customer breach of this Agreement.
- 7.2. **Indemnification by Customer.** Customer will defend TDA against any claim, demand, suit or proceeding made or brought against TDA by a third party alleging that Customer Data, or Customer use of any Service or Content in breach of this Agreement, infringes or misappropriates such third party’s intellectual property rights or violates applicable law (a “Claim Against TDA”), and will indemnify TDA from any damages, attorney fees and costs finally awarded against TDA as a result of, or for any amounts paid by TDA under a court-approved settlement of, a Claim Against TDA, provided TDA (a) promptly gives Customer written notice of the Claim Against TDA, (b) gives Customer sole control of the defense and settlement of the Claim Against TDA (except that Customer may not settle any Claim Against TDA unless it unconditionally releases TDA of all liability), and (c) gives Customer all reasonable assistance, at Customer expense.
- 7.3. **Exclusive Remedy.** This Section 7 states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this Section 7.

8. LIMITATION OF LIABILITY

- 8.1. **Limitation of Liability.** NEITHER PARTY’S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER’S PAYMENT OBLIGATIONS UNDER SECTION 3 (FEES AND PAYMENT FOR PURCHASED SERVICES).
- 8.2. **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9. TERM AND TERMINATION

- 9.1. **Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.
- 9.2. **Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Services Order Form. Except as otherwise specified in a Services Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless TDA has given Customer written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.
- 9.3. **Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of the 30 day period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 9.4. **Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with Section 9.3 (Termination), TDA will refund Customer any prepaid fees covering the remainder of the term of all Services Order Forms after the effective date of termination. If this Agreement is terminated by TDA in accordance with Section 9.3, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve Customer of Customer obligation to pay any fees payable to TDA for the period prior to the effective date of termination.
- 9.5. **Customer Data Portability and Deletion.** Upon request by Customer made within 30 days after the effective date of termination or expiration of this Agreement, TDA will make the Customer Data available to Customer for export or download. After that 30-day period, TDA will have no obligation to maintain or provide Customer Data, and will thereafter delete or destroy all copies of Customer Data in TDA systems or otherwise in TDA possession or control as provided in the Documentation, unless legally prohibited.
- 9.6. **Surviving Provisions.** The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Portability and Deletion of Customer Data," "Who Customer Are Contracting With, Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration if this Agreement.

10. NOTICES, GOVERNING LAW AND JURISDICTION

- 10.1. **Notices.** Notice addresses for the parties are as follows:

The Digital Academy	Customer
1717 Superior Avenue, E. Cleveland, OH 44114-2943 Attn.: Patrick Connor Email: patrick.connor@digitalacademy.org Phone: (216) 781-0575 x103	As found on TDA Services Order Form Customer Name Customer Address Contact

- 10.2. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to Customer shall be addressed to the relevant billing contact designated by Customer. All other notices to Customer shall be addressed to the address above.

10.3. **Agreement to Governing Law and Jurisdiction.** This AGREEMENT shall be governed by the laws of the State of Ohio, and any litigation brought in relation to damages caused by TDA Services shall be brought in a Court in Northeastern Ohio and both parties agree to said jurisdiction.

11. GENERAL PROVISIONS

11.1. **Export Compliance.** The Services, Content, other technology TDA make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit Users to access or use any Service or Content in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

11.2. **Anti-Corruption.** Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of TDA employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify TDA HR Department at hr@TDA.us.com.

11.3. **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Customer and TDA regarding Customer use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Services Order Form or in any other Customer order documentation (excluding Service Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Service Order Form, (2) this Agreement, and (3) the Documentation.

11.4. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, TDA will refund to Customer any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.5. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

11.6. **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

11.7. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

12. Acceptance

12.1. By signing the Digital Academy Services Order Form, the Customer acknowledges they have authority to enter into this Agreement on behalf of Customer and fully understand all of the terms and conditions set forth in this Agreement, and that Customer agrees to the terms and conditions of this Agreement.

Appendix A: Enterprise Data Solutions Hosting

Service Acceptable Use Policy

Introduction

This document sets forth the principles, guidelines and requirements of the Acceptable Use Policy of Enterprise Data Solutions, Inc. (“TDA” and / or “Company”) governing the use by the Customer (“Customer”) of the Company’s services and products (“Services and Products”). The Purpose of the TDA’s Acceptable Use Policy, hereinafter referred to as the AUP, is to comply with all federal, state, and local laws coupled with protecting the network security, network availability, physical security, Customer privacy, and other factors affecting the services provided by TDA. TDA reserves the right to impose reasonable rules and regulations regarding the use of its services provided to all Customers and such rules and regulations are subject to change. Such rules and regulations are located on the Internet at <http://www.TDA.us.com.com/aup>. The AUP is not an all-inclusive or exhaustive list and TDA reserves the right to modify the AUPs at any time as needed, effective upon either the posting of the modified AUPs to <http://www.TDA.us.com.com/aup> or notification to the Customer via email. Any violation of the AUPs may result in the suspension or termination of Customer account or such other action as TDA deems appropriate. No credits will be issued for any interruption in service resulting from policy violations.

VIOLATION OF ANY SECTION OF THE AUP IS STRICTLY PROHIBITED AND MAY RESULT IN THE IMMEDIATE TERMINATION OR SUSPENSION OF THE SERVICES CUSTOMER RECEIVE FROM TDA.

Any questions or comments regarding the AUP should be directed to support@TDA.us.com.

Compliance with Law

Customer shall not post, transmit, re-transmit or store material on or through any of Company’s Services or Products which, in the sole judgment of the Company (i) is in violation of any local, state, federal or non-United States law or regulation, (ii) threatening, obscene, indecent, defamatory or that otherwise could adversely affect any individual, group or entity (collectively, “Persons”) or (iii) violates the rights of any person, including rights protected by copyright, trade secret, patent or other intellectual property or similar laws or regulations including, but not limited to, the installation or distribution of “pirated” or other software products that are not appropriately licensed for use by Customer. Customer shall be responsible for determining what laws or regulations are applicable to its use of the Services and Products.

Customer Security Obligation

Customer must use reasonable care to protect account information for access to servers and software running in TDA’s data center. Failure to use reasonable care to protect Customer account may result in a security compromise by outside sources. A compromised server creating network interference will result in immediate Customer notification and will be disconnected from the network immediately so as to not directly affect other Customers. No service credits will be issued for outages resulting from disconnection due to breached server security. If a Customer intentionally creates a security breach, the cost to resolve any damage to Customer’s server or other servers will be charged directly to the Customer. The labor used to resolve such damage is categorized as Emergency Security Breach Recovery and is currently charged at \$225 USD per hour. System and Network Security Violations of system or network security are strictly prohibited, and may result in criminal and civil liability. TDA investigates all incidents involving such violations and will cooperate with law enforcement if criminal violation is suspected.

Examples of system or network security violations include, without limitation, the following:

1. Introduction of malicious programs into the network or server (example: viruses, worms, Trojan Horses and other executables intended to inflict harm).
2. Effecting security breaches or disruptions of Internet communication and/or connectivity. Security breaches include, but are not limited to, accessing data of which the Customer is not an intended recipient or logging into a server or account that the Customer is not expressly authorized to access. For purposes of this section, “disruption” includes, but is not limited to port scans, flood pings, email-bombing, packet spoofing, IP spoofing and forged routing information.
3. Executing any form of network activity that will intercept data not intended for the Customer’s server.
4. Circumventing user authentication or security of any host, network or account.
5. Interfering with or denying service to any user other than the Customer’s host (example: denial of service attack or distributed denial of service attack).
6. Using any program script/command, or sending messages of any kind, designed to interfere with or to disable, a user’s terminal session, via any means, locally or via the Internet.
7. Failing to comply with the Company’s procedure relating to the activities of Customers on the Company’s premises. Violators of the policy are responsible, without limitations, for the cost of labor to correct all damage done to the operation of the network and business operations supported by the network. Such labor is categorized as Emergency Security Breach Recovery and is currently charged at \$225 USD per hour required. Network interference by any Customers that may cause or is currently causing network interference with another Customer will be disconnected immediately. No service credits will be issued to Customers disconnected for network violations.
8. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.
9. Sending Unsolicited Bulk Email (“UBE”, “spam”). The sending of any form of Unsolicited Bulk Email through TDA’s servers is prohibited. Likewise, the sending of UBE from another service provider advertising a web site, email address or utilizing any resource hosted on TDA’s servers is prohibited. TDA accounts or services may not be used to solicit customers from, or collect replies to, messages sent from another Internet Service Provider where those messages violate either this Policy or that of the other provider.
10. Running Unconfirmed Mailing Lists. Subscribing email addresses to any mailing list without the express and verifiable permission of the email address owner is prohibited. All mailing lists run by TDA, Inc. customers must be Closed-loop (“Confirmed Opt-in”). The subscription confirmation message received from each address owner must be kept on file for the duration of the existence of the mailing list. Purchasing lists of email addresses from 3rd parties for mailing to from any TDA-hosted domain, or referencing any TDA account, is prohibited.

11. Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send Unsolicited Bulk Email, initiation of pinging, flooding, mail-bombing, denial of service attacks.
12. Operating an account on behalf of, or in connection with, or reselling any service to, persons or firms listed in the Spamhaus Register of Known Spam Operations (ROKSO) database at www.spamhaus.org.
13. Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., “cracking”).
14. Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
15. Accessing or attempting to access Customer account or other TDA services after Customer (or Company) has cancelled Customer’s account.
16. Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any TDA customers or end-users by any means or device, including the use of ‘sudo’ or other privileged operating system commands.
17. Knowingly engage in any activities designed to harass, or that will cause a denial-of-service (e.g., synchronized number sequence attacks) to any other user whether on the TDA network or on another provider’s network.
18. Using TDA’s Services to interfere with the use of the TDA network by other customers or authorized users.