

WorldSpice Services: Terms & Conditions



1. Service Offering.

You ("Customer") agree you are contracting for the services ("Services") referenced on the WorldSpice Service Order Agreement ("SOA") with WebNet Memphis, Inc., d.b.a. WorldSpice Technologies ("WorldSpice"). This Agreement (as defined below) between Customer and WorldSpice sets forth the legal rights and obligations governing the WorldSpice offer, provisioning, and delivery of Services to Customer and Customer's use of those Services.

2. WorldSpice Network Usage.

A. Compliance with Law and Policy. Customer agrees to comply with WorldSpice Net-Abuse Policy ("Policy") and as the Policy may be modified by WorldSpice from time to time. Any content, material, message, or data made available or transmitted through the Service, wherever it is sent from, viewed, received, or retrieved, that is in violation of (i) any local, state, federal, foreign or international law, regulation or treaty; (ii) the Policy; or (iii) any community standard or accepted Internet policy is prohibited.

B. Customer-Only Traffic. The right to use the Service is strictly limited to Customer only and does not extend to any other person, corporation or entity except for wholly-owned affiliates of Customer and those members of Customer's staff and consultants in the course of performing work for Customer.

C. Third Party Traffic. Customer may not host worldwide web sites on behalf of third parties. In addition, Customer may not feed USENET News to a third party including, but not limited to, electronic mail, back to WorldSpice wide-area network system (the "Network") or the Internet through the Service. Any other third party traffic, including packet access and electronic mail, whether sent or received through Customer's facilities by or on behalf of a third party through the Service, is expressly prohibited.

3. Network Numbers and Domain Names.

A. Network Numbers. WorldSpice shall assign IP addressing for use by Customer during the term of the Service. With justification, as required by WorldSpice and cooperation with the appropriate IP addressing body, such as ARIN (American Registry for Internet Numbers) or InterNIC (Internet Network Information Center), additional addresses for large sites may be assigned for an additional fee. In addition, WorldSpice may change IP address assignments, as they deem necessary, from time to time. WorldSpice network numbers are and will remain at all times the property of WorldSpice. If Service is terminated, for any reason whatsoever, the WorldSpice network numbers used by Customer will remain the property of WorldSpice and are subject to reassignment and reuse by WorldSpice, in WorldSpice's sole discretion. WorldSpice has sole discretion as to the Internet routing of the network numbers.

B. Domain Name. Customer, not WorldSpice is responsible for the ownership, control and use of the domain name upon its registration and at all times thereafter, including the renewal of registration of any domain names.

4. Technical Support.

A. WorldSpice Technical Support. WorldSpice provides 24/7 technical support via telephone. Some technical support may also be obtained by accessing www.worldspice.net.

Service Calls. In the event that WorldSpice makes a Service Call to Customer's premises, and the underlying problem proves to be the Customer's network or a problem with the WorldSpice network which has been caused by Customer, whether intentionally or negligently, then Customer shall be invoiced and pay an amount equal to the amount of time that the Service Technician spends working on the problem multiplied by the Service Technician's then hourly rate. The amount invoiced and paid shall be in addition to any monthly recurring charges, any non-recurring charges and/or any equipment charges.

B. Customer Provided Technical Support. Day-to-day operations and technical support of Customer's internal LAN shall be the sole responsibility of Customer. Day-to-day operations shall include, but not be limited to: on-site configuration (including packet filtering), testing, trouble-shooting, maintenance, and upgrades of Customer Equipment and/or software.

C. Shared Technical Support. WorldSpice will work with Customer's LAN Administrator to troubleshoot any problems or issues with Customer's network in regard to access to the Internet.

5. Fees.

A. Service Fees. The fees for Services, both recurring and non-recurring, including but not limited to installment costs, equipment costs, and software costs, shall be set forth in the SOA and shall be valid for the Initial Term. Fees do not include taxes, surcharges and fees charged by WorldSpice.

B. Early Cancellation Fees. If Customer selected an Initial Service Term of more than one month, Customer has been provided a special rate on non-recurring and/or recurring fees in exchange for Customer's agreement to purchase Service for the full Term, as specified in the SOA. If Customer terminates after his/her installation date, but before the end of the his/her Term or prior to the end of any subsequent term, or WorldSpice terminates following Customer's default of the SOA or these Terms and Conditions, Customer agrees to pay, not as a penalty, but rather as liquidated damages in addition to all other incurred charges for Service, the following:

1. an Early Cancellation fee equal to 75% of the following: the Monthly Recurring Fee that is currently being charged, multiplied by the number of months remaining until the end of the Term; and
2. any fees that have been waived, including any discounts given.

C. Transfer Fees. Should Customer relocate its business to a location different than the location receiving Service under the SOA, during the Initial Term of the SOA, these Terms and Conditions shall remain in full force and effect with the exception that WorldSpice may charge Customer an additional reconnection or transfer fee for the re-installation of Services at the new location. If the Service is not transferred due to Customer's request not to or because it cannot be for technical reasons, Early Cancellation Fees, as provided herein, shall be applied if applicable.

D. Taxes. Customer agrees to pay to WorldSpice any and all State (including but not limited to Tennessee) and Federal sales taxes applicable to the items listed on the SOA. WorldSpice shall remit any taxes collected to the appropriate collecting agency. If WorldSpice becomes subject to any new taxes or fees by any applicable legislative authority or any of its telecommunications providers, WorldSpice reserves the right to pass these fees and/or taxes onto Customer, including any administrative costs.

6. Billing.

A. First Invoice. The first invoice will be generated shortly after the date of Installation. This invoice is due upon receipt and shall include, but is not limited to the following: (i) any non-recurring charges for installation and/or setup; (ii) the first monthly recurring Service Fee; and (iii) fees for any additional options, equipment or software ordered (if any).

B. Subsequent Invoices. Subsequent invoices will be for the specified term of Service and options (if applicable) and are payable on the first day of the month, for that particular month's Service.

C. Late Payments. Invoices not paid by their due date may be subject to a monthly interest fee equal to an amount of up to 1.5%, or the maximum percentage allowed by applicable laws, whichever is less, on all past-due balances. In the event of any default under the terms of this Agreement, Customer agrees to pay all costs of collection, including but not limited to: (1) collection fees; (2) court costs; (3) private process fees, and; (4) attorney's fees.

D. Returned or Rejected Payment. If Customer's payment is returned or rejected for any reason whatsoever, Customer agrees to pay a \$20 fee to WorldSpice, in addition to any fees that may be charged to Customer, by an interested third party.

E. Payment History. Customer agrees that WorldSpice may request that an appropriate reporting agency furnish information to WorldSpice to enable it to assess Customer's payment history. The billing arrangements set forth above constitute an ordinary trade account and not the extension of "credit". Customer acknowledges that WorldSpice reserves that right to alter the billing arrangements to Customer either before or after acceptance of this Service Order based on the resulting information.

F. Changes. WorldSpice reserves the right to change the billing intervals upon written notice to Customer.

7. Term/Renewal/Termination.

A. Initial Service Term. The SOA shall extend from the date of Installation, as defined, until the end of the Term, as specified in the SOA. The first month will be prorated as necessary. This Initial Term is NON-CANCELLABLE and/or NON-TERMINABLE, except as provided herein.

Date of Installation. The Date of Installation shall be the date that WorldSpice determines that the Service is available for Customer use.

B. Renewal. Unless terminated by either party as provided herein, the SOA shall automatically renew after the Initial Term on a Month-to-Month basis, requiring 30 days written notice of termination, at a rate equal to the then current MRC plus ten percent (10%) or Customer's MRC, whichever rate WorldSpice shall choose in its sole discretion.

C. Termination.

1. For Default. Either party may terminate the SOA for default by the other party due to a material breach of the SOA or these Terms and Conditions should such breach not be cured within thirty (30) days of written notice to the offending party clearly specifying the breach. If the defaulting party is Customer than the Early Cancellation Fees, defined above, shall apply. A material breach of these Terms and Conditions and/or the SOA shall include, but is not limited to, cancellation by Customer prior to the end of the Initial Term or any subsequent Term.

2. For Non-Payment. After thirty (30) days of non-payment from the WorldSpice due date, Service may be disabled by WorldSpice (and then subject to a reconnection fee and a reconnection time-delay in Service) and /or the SOA terminated at WorldSpice's sole discretion. Disablement of the Service or termination of the SOA for non-payment does not remove Customer's responsibilities under the SOA and these Terms and Conditions, including but not limited to, the responsibility to pay all fees up to the date of disablement or termination as well as any Early Cancellation Fees, as defined above.

3. End of Term. Either party may terminate the SOA at the end of the Initial Term or any subsequent renewal term, for any reason, by providing written notification. Termination shall not be effective until thirty (30) days from the date of written notification. Customer is responsible for any and all fees up to the effective termination date.

8. Limited Warranties and Disclaimers.

A. Service. WorldSpice warrants that the Service will operate substantially in conformance with the specifications. WorldSpice makes no other warranties of any kind, whether expressed, implied, or statutory, including, but not limited to, any implied warranty of merchantability, fitness for the Service for a particular purpose and non-infringement of any third party rights. Customer is responsible for assessing its own computer and transmission network needs, and the results to be obtained there from. Use of any information obtained through the Service is at Customer's risk. WorldSpice specifically denies any responsibility for the accuracy or quality of information obtained through the service.

B. Equipment. WorldSpice does not Warrant and/or Guarantee the life of any equipment. Any new, additional, or replacement equipment costs during any initial term and/or renewal term shall be borne by Customer.

C. Delays or Defaults. WorldSpice shall not be liable for delays or defaults in furnishing goods or services hereunder, if such delays or defaults on the part of WorldSpice are due to:

1. Acts of God or of a public enemy;
2. Acts of the United States or any state or political subdivision thereof;
3. Fires, severe weather, floods, earthquakes, natural disasters, explosions or other catastrophes;
4. Embargoes, epidemics or quarantine restrictions;
5. Shortage of goods, labor strikes, slowdowns, differences with workmen or labor stoppages of any kind;
6. Delays of supplier or delay of transportation for any reason;
7. Cause beyond the control of WorldSpice in furnishing items or services including, but not limited to, breakdown or failure of machinery or equipment, or delay in Customer reporting problems or furnishing information or materials.

D. Subpoenas. It is the policy of WorldSpice to comply with any legally written and served subpoenas to the extent that the law will allow.

9. Limited Liability of WorldSpice.

A. Exclusive Remedies. WORLDSPICE'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDIES AGAINST WORLDSPICE, FOR ANY DAMAGES CAUSED BY ANY SERVICE OUTAGE, DEFECT OR FAILURE SHALL BE AN OUTAGE CREDIT BASED UPON THE COST OF THE SERVICE AND THE DURATION OF THE OUTAGE, DEFECT OR FAILURE.

B. Limitation of Liability. WORLDSPICE'S ENTIRE LIABILITY FOR OTHER CLAIMS ARISING IN CONNECTION WITH ANY SERVICE OR THIS AGREEMENT, IF NOT OTHERWISE LIMITED BY ANOTHER PROVISION OF THIS AGREEMENT, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED PER CLAIM (OR IN THE AGGREGATE DURING ANY THREE-MONTH PERIOD) THE TOTAL NET PAYMENTS MADE BY CUSTOMER FOR THE APPLICABLE SERVICE DURING THE SIX (6) MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED.

C. No Consequential or Punitive Damages. IN NO EVENT SHALL WORLDSPICE BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTIES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, WHETHER OR NOT WORLDSPICE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

D. Technical Limitations. WORLDSPICE SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, INTERACTION OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY THE CUSTOMER OR THIRD PARTIES; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF THE CUSTOMERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, EQUIPMENT, NETWORK OR SYSTEMS.

E. Form of Claim. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION AND IN ANY ATTACHMENT SHALL APPLY: (i) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (ii) WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT, AND (iii) ONLY TO DISPUTES WHICH ARISE FROM THE PERFORMANCE OF THIS AGREEMENT AND ANY ATTACHMENT THERETO.

10. General Terms.

A. Assignment/Transfer. Customer may not sell, transfer, or assign the SOA and these Terms and Conditions, except to entities completely controlling or controlled by Customer, or to entities acquiring all or substantially all of its assets, without the prior written consent of WorldSpice, which consent shall not be unreasonably withheld.

B. No Third Party Beneficiaries. This Agreement does not expressly or implicitly provide any third party (including end-users) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

C. Modification. The SOA and these Terms and Conditions may be modified only in a writing signed by Customer and WorldSpice.

D. Notice. All notices must be in writing. All notices to WorldSpice shall be addressed and delivered to: 5050 Poplar, Suite #170, Memphis, Tennessee, 38157. All notices to Customer shall be addressed to the billing address specified on the relevant SOA, unless otherwise stated in an addendum to the SOA. If a party's notice address changes for any reason, that party shall notify the other in writing of this new address.

E. Severability. If any provision of these Terms and Conditions is held to be invalid or unenforceable for any reason whatsoever, the remaining provisions shall remain valid and unimpaired, and shall continue in full force and effect.

F. Captions. Captions contained in these Terms and Conditions are for reference purposes only, and are not intended by either party to describe, interpret, define, broaden or limit the scope, extent or intent of these Terms and Conditions or any of its provisions.

G. No Waiver. Either party's failure to enforce any provision or term of this Agreement shall not be construed as a future or continuing waiver of such provision or term of this Agreement.

H. Governing Law. The SOA and these Terms and Conditions shall be governed by the substantive law of the State of Tennessee without reference to its principles of conflicts of law.

I. Jurisdiction. By signing below, customer hereby agrees to submit to personal jurisdiction and venue of court of subject matter jurisdiction located in Shelby County, Tennessee, for any action or proceeding arising out of or in relation to the SOA or these Terms and Conditions.