

phorium

Phorium is a Web Presence Provider. User accounts on our Internet servers are subject to compliance with the terms and conditions set forth below. Under the terms of this agreement, your placement of information on **Phorium**'s servers is an acknowledgement that you have read and understood this agreement, and that you agree to be bound by the terms and conditions below. If you do not wish to be bound by these terms and conditions, you should not proceed to place any information of any kind on **Phorium**'s servers.

1. USER CONDUCT

Phorium's services may only be used for lawful purposes. Any use of these services which violates any local, state, federal, or international laws which may apply to **Phorium**, your local jurisdiction, or any jurisdiction that you or your site may be subject to is strictly prohibited.

While using the service, you may not:

- A. Restrict or inhibit any other user from using and enjoying the Internet;
- B. Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law, including without limitation the U.S. export control laws and regulations, and laws protecting intellectual property including copyright, trademark, trade secret, misappropriation and anti-dilution laws;
- C. Post, publish, transmit, reproduce or distribute any information or software which contains a virus or other harmful component;
- D. Post, publish, transmit, reproduce, distribute or in any way exploit any information, software, or other material obtained through the service for commercial purposes (other than as expressly permitted by the provider of such information, software, or other material);

2. INDEMNIFICATION

You agree to indemnify, defend, and hold harmless **Phorium** from any and all liability, penalties, losses, damages, costs, expenses, attorneys' fees, causes of action or claims caused by or resulting indirectly from your use of the service which damages either you, **Phorium**, or any other party or parties without limitation or exception. This indemnification and hold harmless agreement extends to all issues associated with your account, including but not limited to domain name selection and Web site content.

3. REFUSAL OR DISCONTINUANCE OF SERVICE

Phorium reserves the right to refuse or discontinue service to anyone at **Phorium**'s sole discretion. **Phorium** may deny you access to all or part of the service without notice if you engage in any conduct or activities that **Phorium** in its sole discretion believes violates any of the terms and conditions in this agreement. **Phorium** shall have no responsibility to notify any third- party providers of services, merchandise, or information, nor any responsibility for any consequences resulting from such discontinuance or lack of notification. You agree that **Phorium** has the right to monitor the service electronically from time to time and to disclose any information as necessary to satisfy the law, or to protect itself or its subscribers. **Phorium** reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of this agreement.

4. NO WARRANTIES

Phorium makes no warranties or representations of any kind for the services being offered. The service is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title, noninfringement, or implied warranties of merchantability or fitness for a particular purpose. No advice or information given by **Phorium** or its agents or employees shall create a warranty. **Phorium** provides no warranty that the service will be uninterrupted or error free or that any information, software or other material accessible on the service is free from viruses or other harmful components. Under no circumstances shall **Phorium** be liable for any direct, indirect, special, punitive, or consequential damages that result in any way from your use of or inability to use the service, or for third parties' use of the service to access your Web space, or to access the Internet or any part thereof, or your or any third parties' reliance on or use of information, services, or merchandise provided on or through the service, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, or any failure of performance. If you are dissatisfied with **Phorium** service or any of its terms, conditions, rules, policies, guidelines, or practices, your sole and exclusive remedy is to discontinue using the service.

You understand that by placing information on **Phorium**'s servers that such information becomes available to all Internet users and that **Phorium** has no way of limiting or restricting access to such information or protecting such information from copyright infringement. You assume total responsibility and risk for your use of **Phorium**'s servers and the Internet. It is solely your responsibility to evaluate the accuracy, completeness, and usefulness of all opinions, advice, services and other information, and the quality and merchantability of all merchandise provided through **Phorium** or on the Internet generally.

5. ECPA NOTICE

Phorium reserves the right to monitor any and all communications through or with our facilities. You agree that **Phorium** is not considered a "secure communications medium" for the purposes of the ECPA, and that no expectation of privacy is afforded.

6. IDENTIFICATION INFORMATION

You agree that you as the person legally responsible for use of this account, are at least 18 years of age. You agree to supply **Phorium** with a current and truthful name, postal address and telephone number for our records, and you have a continued obligation to keep this information current. You also agree that you are an authorized user of any credit card that you supply to us and agree that we have an obligation to fully investigate any possible fraudulent credit card use.

7. NO INTERFERENCE WITH OPERATION OF SYSTEM

You agree not to maliciously or intentionally interfere with the proper operation of the system, including but not limited to defeating identification procedures, obtaining access beyond that which you are authorized for, and impairing the availability, reliability, or quality of service for other customers. You further agree not to interfere with the proper operation of other systems reachable through the Internet, including any attempt at unauthorized access. You agree to follow the Acceptable Use Policy of any network or service you connect to.

You agree to adhere to system policies as published online by **Phorium**, including restrictions on services available with each account type, restrictions on certain features, and all other policies designed to protect and enhance the quality and reliability of service at **Phorium**. You agree to abide by any and all future **Phorium** policy decisions.

8. SECURITY

You agree that the security of your account is solely your own responsibility. You further agree that if you believe the security of your account has been compromised in any way, you will notify **Phorium** immediately in writing by registered mail, with return receipt, to **Phorium LLC**, PO Box 1365, Tualatin, OR 97062. You shall be held fully responsible for any misuse or compromise to your account for which **Phorium** is not properly notified. You agree not to provide or share access to your account to any third party, and that you are responsible for any use of your account by any party to whom such access has been provided. You agree that certain features of your account (e.g., Web User accounts, additional FTP logins) which may be used to provide shared access to your account are not to be used to resell services to third parties, and that you are responsible for the actions of any party which utilizes those features. You agree that if any security violations are believed to have occurred in association with your account, **Phorium** has the right to suspend access to the account pending an investigation and resolution. You also agree that **Phorium** has the right to cooperate in any government or legal investigation regarding any aspect of our services, including services sold to you. Any use of our system to engage in software piracy or other violations of law will result in account suspension and will be immediately reported to the appropriate authorities.

9. BACKUP OF DATA

Phorium maintains nightly backups of the contents of the servers at a remote location. However, your use of the service is at your sole risk. **Phorium** is not responsible for files and data residing on your account. You agree to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on **Phorium** servers.

10. TRANSMITTAL OF MATERIALS

You agree not to transmit unsolicited or prohibited advertising or other harassing or illegal materials through electronic mail, Usenet postings, or other Internet media. The use of **Phorium** or any other service with reference to services obtained through **Phorium**, for unsolicited mass mailings, postings, or other activities considered an annoyance to others, commonly referred to as "spamming" is strictly prohibited and may cause your services to be terminated immediately and without warning and you will be held fully responsible for any damages to you, **Phorium**, or any other party or parties resulting from any such conduct.

11. PAYMENT

You agree to supply appropriate payment for the services received from **Phorium**, in advance of the time period during which such services are provided. You agree that all setup fees are non-refundable once setup is completed. You agree that until and unless you notify **Phorium** of your desire to cancel any or all services received, those services will be billed on a recurring basis. You agree that if you are paying by credit card, prepayments will be billed and charged automatically, and that **Phorium** may apply the amount due to the provided card at any time. **Phorium** agrees that pro-rated refunds for unused time periods will be provided upon request, in the event of account termination.

12. PRIOR AGREEMENTS

This agreement supersedes any written, electronic, or oral communication you may have had with **Phorium** or any agent or representative thereof, and constitutes the complete and total agreement between the parties.

13. SEVERABILITY

If any provision of this agreement is determined to be invalid or unenforceable, all other provisions shall remain in full force and effect and said provision shall be reformed only to the extent necessary to make it enforceable.

14. APPLICABLE LAW, JURISDICTION, AND SERVICE

This agreement shall be governed by the applicable laws of the State of Oregon and the United States of America. Customer agrees that all services provided by **Phorium** shall be deemed to have been requested and provided in Multnomah County, Oregon.

15. ACKNOWLEDGEMENT

By placing and continuing to maintain or place information on **Phorium**'s servers you are stating and acknowledging that you have read the aforementioned terms and conditions and that you understand such terms and conditions and agree to be bound by them.

16. CONTACT INFORMATION

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