

## **Peak10 (Flexential) Vendor Terms & Conditions**

Services to commence at the time agreed by the parties, and are subject to the provisioning and availability of the Provider's platform. Services are provided for the term set forth in this agreement, and such term will renew automatically at the anniversary date of the term, unless either party provides ninety (90) days' notice of its intent not to renew the Services.

Client is subject to overage charges for storage used in excess of the amounts set forth herein.

Client authorizes Alphaserve to act on its behalf to initiate and modify the services provided by Peak10, and to accept terms relating to the service provided by Peak10. The services provided by Peak10 will be supported and managed by Alphaserve only where Client has subscribed in writing to the relevant managed services offered by Alphaserve which correspond to the services provided by Peak10. Where Alphaserve provides support and management of the services provided to Client by Peak10, Alphaserve will follow the implementation recommendations made by Peak10.

The services described herein are additionally governed by the terms set forth below:

1. Definitions.

- a. "Cloud" means an information technology system, owned/leased, operated, maintained, and housed by Peak 10, which is comprised of software and hardware including data storage, physical servers (hosts), and networking components used to provide Services to Client.
- b. "Client Equipment" means any equipment provided by or on behalf of Client, whether or not owned by Client.
- c. "Equipment Space" means the area within the Facility that Client may occupy and use.
- d. "Facility" means the data center where the Equipment Space is located or where the infrastructure used to provide the Services is located.
- e. "Alphaserve" means Comgroup Holding LLC dba Alphaserve Technologies and includes any third parties who may be providing Services on behalf of Alphaserve to Client, specifically including but not limited to Peak 10, Inc. ("Peak 10").
- f. "Alphaserve Equipment" means any equipment used by Alphaserve to provide the products and services pursuant to this Agreement. Such equipment may be located inside or outside the Equipment Space.
- g. "Services" means those services set forth in the services agreement between Alphaserve and Client which are provided by Peak 10 (the "Alphaserve – Client Agreement").

2. Equipment Space.

- a. Use. Client will be entitled to occupy and use the Equipment Space only for placement and maintenance of computer equipment, telecommunications or Internet access equipment. Alphaserve shall have the right to access the Equipment Space for any business purpose at all times. Client will install and maintain the Equipment in a reasonable and professional manner that does not adversely impact the operations of Alphaserve or other customers.

b. Alphaserve Equipment. Alphaserve may remove all Alphaserve Equipment for repair, replacement, or otherwise as Alphaserve may determine is necessary, but Alphaserve shall use reasonable efforts to minimize disruptions to the service provided to Client caused thereby. Client shall not and shall not permit others to rearrange, disconnect, remove, and attempt to repair or otherwise tamper with any Alphaserve Equipment.

c. Installation and Operation. Alphaserve shall not be responsible for the operation or maintenance of any Client Equipment.

d. Content of Transmissions. Client is solely responsible for the content of any transmissions utilizing the Services. The use of another organization's network or computing resources is subject to its respective permission and usage policies. Client agrees not to use the Services for illegal purposes, to interfere with or disrupt other network users, network services or network equipment.

e. Hazards or Interference. Upon notice from Alphaserve, Client will promptly eliminate any hazard, interference or service obstruction that any hardware or software used by Client, whether or not provided by Alphaserve, is causing, or is likely to cause.

f. Subject to Lease. The Client Equipment is placed in the Equipment Space subject and subordinate to the terms and provisions of the Facility lease(s).

g. Condition of Equipment Space. Client shall maintain the Equipment Space in an orderly and safe condition.

3. ACCESS DEVICES AND PASSWORDS. Alphaserve may provide Client with various accounts/passwords in connection with the Services. Client is responsible for maintaining the confidentiality of its account and passwords and Client is responsible for all activities that occur under Client's account. Alphaserve may also provide Client with access cards, keys or other access devices or software ("Devices") to permit Client entry to the Equipment Space. In the event that unauthorized parties gain access to the Equipment Space through Devices, Client shall be responsible for any damages incurred as a result thereof. Client shall be responsible for the cost of replacing any Devices lost or stolen after delivery thereof to Client.

#### 4. Equipment and Software.

a. Rights To. Client represents, warrants and covenants that it owns or has the legal right and authority, and will continue to own or secure the legal right and authority, during the Term, to use Client Equipment and any software provided by Client.

b. Software Terms. With respect to any software provided for Client's use in connection with the Services, including any Microsoft software, (collectively "Software") Client agrees to abide by the Additional Software Terms located at [www.peak10.com](http://www.peak10.com) (or a successor site) as may be updated from time to time. The Additional Software Terms are incorporated by reference into this Agreement.

c. Microsoft Software. To the extent Client receives Cloud Services, Client will not utilize any of its own Microsoft software on the Cloud without Peak 10's prior written consent. Client will indemnify and defend Alphaserve from a breach of this Section 4(c).

5. ACCEPTABLE USE POLICY. Client represents, warrants and covenants that it will abide by the Acceptable Use Policy ("AUP") located at [www.peak10.com](http://www.peak10.com) (or any successor site) as may be updated from time to time and is and is incorporated by reference into this Agreement.

6. REMOVAL OF EQUIPMENT. Upon termination of this Agreement for any reason: (i) Client will remove all Client Equipment from the Facility within ten (10) days of the applicable termination date. In the event Client does not coordinate the removal of Client Equipment or other Client property from the Facility within sixty (60) days of the termination or expiration date, subject to any applicable laws, Alphaserve shall be entitled to dispose of any Client Equipment or other Client property as Alphaserve sees fit, including, without limitation, destruction or sale of the property in question, all at Client's risk and expense. Alphaserve will not be liable to Client or any third party as a result of such disposal. Client will pay Alphaserve all reasonable costs incurred in connection with the storage and disposal of any Client Equipment or Client property.

7. Restricted Access. Client's access to the Facility and Client Equipment may be restricted if undisputed balances are past due. Client will be liable for any attorneys' fees or other costs associated with collecting late payments.

8. SUSPENSION OF SERVICES. Alphaserve reserves the right to suspend all Services in the event (a) any undisputed invoices are past due or (b) Alphaserve reasonably believes: (i) Client is in violation of this Agreement, including the AUP; (ii) Client is in violation of any applicable law; (iii) it is required to suspend Services under applicable law; or (iv) continuing to provide the Services would result in significant damage to Alphaserve, the Alphaserve network or other Alphaserve customers.

9. INSURANCE. With respect to colocation Services only, prior to use of the Equipment Space and during the Term, Client shall procure and maintain the following minimum insurance coverage: Workers' Compensation in an amount not less than that prescribed by statutory limits; Employer's Liability with limits of \$500,000 each accident; Commercial General Liability with combined single limits of \$1,000,000 each occurrence; and "All Risk" Property insurance covering all of Client's Equipment. Client will notify Alphaserve in writing at least thirty (30) days in advance of cancellation or reduction in coverage. Client's Commercial General Liability policy shall be endorsed to show Alphaserve (and/or Peak 10 as requested by Alphaserve) as an additional insured. Client shall require any contractor entering the Equipment Space on its behalf to procure and maintain the same types, amounts and coverage extensions as required of Client. Prior to the Effective Date and upon Alphaserve's reasonable request, Client will provide Alphaserve with evidence of compliance with this Section. None of the foregoing requirements as to the type and limits of insurance to be maintained by Client are intended to and shall not in any manner limit or qualify the liabilities and obligations for which Client is responsible under this Agreement or by law.

10. CASUALTY OR EMINENT DOMAIN. In the event of taking eminent domain or damage by fire or other casualty to the Facility, Client shall acquiesce and be bound by any action taken by or agreement with respect thereto.

11. NOT A LEASE. This Agreement is a service agreement and is not intended to and will not constitute a lease of real property. Client acknowledges and agrees that it has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances.

12. ABILITY TO CHANGE EQUIPMENT SPACE. Alphaserve reserves the right to change the location or configuration of the Equipment Space; provided, however, that Alphaserve shall not arbitrarily or discriminatorily require such changes. Alphaserve and Client shall work in good faith to minimize any disruption in Services that may be caused by such changes in location or configuration of the Equipment Space and the cost will be borne by Alphaserve.

13. Indemnification Obligations. Client shall indemnify and defend Alphaserve, and its employees, directors, officers and suppliers, against any claim, loss, damage, expense or liability (including reasonable attorneys' fees and court costs (collectively, "Claims")) to the extent that such Claims are caused by or arise from: (a) the acts or omissions of Client; or (b) Client's breach of this Agreement.

14. Representations. Client represents and warrants as follows: (i) the execution of this Agreement does not violate any agreement to which Client is a party; (ii) Client will not make any material alterations to the Equipment Space without first obtaining the written consent of Alphaserve; (iii) Client will not allow personnel or contractors to enter the Equipment Space who have not been approved by Alphaserve in advance; or (iv) Client will comply with any posted or otherwise communicated rules relating to use of or access to the Equipment Space; and (v) Client will comply with all applicable federal, state and local laws.

15. DISCLAIMERS. THE SERVICES, INCLUDING THE EQUIPMENT SPACE, ARE DELIVERED AND ACCEPTED BY CLIENT "AS IS" AND "AS AVAILABLE" AND ALPHASERVE MAKES NO REPRESENTATION, AND HEREBY DISCLAIM, ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY FITNESS FOR A PARTICULAR USE, WARRANTIES THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. NO ADDITIONAL TERMS IMPOSED BY CLIENT BY PURCHASE ORDER OR OTHERWISE SHALL APPLY TO THIS AGREEMENT. CLIENT ACKNOWLEDGES THERE ARE INHERENT RISKS IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CLIENT PRIVACY AND PROPERTY, INCLUDING CONFIDENTIAL INFORMATION. ALPHASERVE ASSUMES NO LIABILITY FOR ANY DAMAGE, THEFT OR LOSS TO CLIENT'S PROPERTY (INCLUDING, WITHOUT LIMITATION, CLIENT EQUIPMENT AND DATA) RESULTING FROM THE ACTS OR OMISSIONS OF ANY THIRD PARTY NOT INVOLVED IN THE PROVISION OF SERVICES, INCLUDING, WITHOUT LIMITATION, ANY UNAUTHORIZED PHYSICAL OR NON-PHYSICAL ACCESS (SUCH AS HACKING). ANY SUCH DAMAGE OR LOSS WILL BE THE EXCLUSIVE RESPONSIBILITY OF THE THIRD PARTY WHO CAUSED SUCH LOSS OR DAMAGE.

16. LIMITATION ON LIABILITY. THE ENTIRE LIABILITY OF ALPHASERVE OF WHATEVER NATURE ARISING OUT OF THE THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, TORTIOUS CONDUCT, REPRESENTATIONS, ERRORS, OR OTHER DEFECTS, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE PRICE OF SERVICES PURCHASED BY CLIENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT WHICH CAUSED THE DAMAGES OR INJURY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER ALPHASERVE NOR PEAK 10 SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS OR LOST REVENUES), WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF ITS EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER CLIENT HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. CLIENT ACKNOWLEDGES THAT THIS LIMITATION FORMS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT THIS LIMITATION ON LIABILITY SURVIVES ANY REMEDY'S FAILURE OF ESSENTIAL PURPOSE.

17. CONFIDENTIALITY.

a. Confidential Information. The parties acknowledge that each party (the "Recipient") will receive in connection with this Agreement confidential information relating to the other party's (the "Disclosing Party") business, including but not limited to, information regarding the Disclosing Party's products, pricing, services, offerings planned or proposed marketing or promotion of the Disclosing Party's products, services or offerings; the Disclosing Party's business strategies, policies

or practices; the Disclosing Party's inventions, patents, discoveries, ideas, concepts, software in various stages of development, designs, drawings, specifications, techniques, models, data, source code, object code, documentation, diagrams, flow charts, research, development, processes, procedures, "know-how," trade secrets; and information received from others that Disclosing Party is obligated to treat as confidential (collectively, "Confidential Information"). Each party agrees to protect and maintain the secrecy of the Disclosing Party's Confidential Information by, among other things: (i) treating such information with at least the same standard of care and protection which such party accords its own confidential and proprietary information but in any event with no less than a reasonable degree of care; (ii) using care in the assignment of personnel who receive or have access to such information, and instructing and obtaining the prior written agreement of such personnel to take all reasonable precautions to prevent unauthorized use or disclosure thereof; and (iii) not using, disclosing or exploiting such information except as necessary to perform any services or obligations hereunder or as otherwise pre-authorized by the Disclosing Party in writing. The parties acknowledge and agrees that the terms of this Agreement constitute Confidential Information.

b. Exceptions. Confidential Information does not include any information that the Recipient can demonstrate: (i) was in the public domain at the time it was received; (ii) enters the public domain through no fault of the Recipient; (iii) is independently developed by Recipient without use of or reference to the Disclosing Party's Confidential Information; or (iv) is disclosed as required by law (including disclosures necessary or appropriate in filings with the Securities and Exchange Commission or other governmental body). In addition, Recipient may disclose the Disclosing Party's Confidential Information to a legal, judicial or governmental entity, or as required by the rules or orders of a court or governmental entity, provided that, before such disclosure, Recipient shall give the Disclosing Party reasonable advance written notice of such so that the Disclosing Party can seek a protective order or the appropriate protection for the Confidential Information and the Recipient uses reasonable efforts to have such information treated as confidential and under seal.

c. Effect of Termination. Upon termination of this Agreement, and on written request of the Disclosing Party, the Recipient will promptly destroy, and provide satisfactory certification of such destruction, all tangible items containing the Disclosing Party's Confidential Information.

d. Injunctive Relief. Each party acknowledges that all of the Disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the Disclosing Party, the degree of which would be difficult to ascertain. Accordingly, notwithstanding Section 15(c), each party agrees that the Disclosing Party will have the right to seek an immediate injunction enjoining any breach or alleged breach of this Section, wherever it deems appropriate, as well as the right to pursue any and all other rights and remedies available at law or in equity in the event of such a breach or alleged breach.

18. PROPRIETARY RIGHTS. This Agreement shall not be construed to grant to Client any ownership right, title or interest in any intellectual property rights embodied in or associated with the products and Services provided hereunder. All intellectual property rights, title and interest in the methodology, technology and know-how that Alphaserve uses to provide the products and services shall remain exclusively with Alphaserve, Peak 10, or their licensors, as applicable.

19. COMPLIANCE.

a. Business Associate Agreements. Unless the parties have executed a mutually agreeable Business Associate Agreement ("BAA") contemporaneously with this Agreement, Client represents

that no "Protected Health Information" as defined in regulations established in accordance with the Health Insurance Portability and Accountability Act ("HIPAA") will be maintained on Client Equipment or on the Cloud. Client will immediately notify Alphaserve if PHI is to be maintained on Client Equipment or on the Cloud and the parties will execute a mutually agreeable BAA. If the parties are unable to execute a BAA or Sub-BAA within a reasonable period of time, either party may terminate this Alphaserve – Client Agreement without liability upon thirty (30) days prior written notice.

b. Responsibility. Client acknowledges and agrees that Alphaserve is neither responsible for knowing what type of information may be created, stored, used or managed by Client in connection with the Services nor for knowing or investigating which laws may or may not apply to such information. If any state or federal law requires any specific agreement about such information, it is Client's responsibility to notify Alphaserve and, in such event, the parties will work together in good faith to modify this Agreement as may be required.

c. Risk Assessment. Client acknowledges and agrees that it: (i) has conducted an assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Client information to be created, transmitted, stored, used or maintained in connection with the Services; (ii) has determined that the Services are sufficient for Client's purposes and Client's compliance with applicable law; and (iii) Alphaserve is not responsible for determining whether any Services are sufficient for Client's compliance with any applicable law.

20. TARIFFS. Client understands that Internet use, and related products and services provided under this Agreement may require registration and related administrative reports which are public in nature. Alphaserve may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain services by Alphaserve to Alphaserve. In the event that such tariffs are filed respecting services ordered by Alphaserve, then the terms set forth in the applicable tariff shall govern Alphaserve's delivery of, and Alphaserve's consumption or use of, such Services.