



# Server Permission Agreement

This Server Permission Agreement ("Agreement") is made by and between Plesk International GmbH, including its affiliated companies of the Plesk group ("Plesk"), and the Customer who intends to grant Plesk access to its server infrastructure ("Customer") (each a "Party" hereto):

Recitals

WHEREAS, Customer desires to grant Plesk access to its' Servers (the "System") in order to receive certain Services by Plesk.

WHEREAS Plesk is willing to accept such permission to access the System.

NOW, THEREFORE, the Parties hereto, intending to be legally bound, hereby agree as follows:

## 1. Services.

Per Customer's order, Plesk shall provide to Customer certain services (the "Services"), which require Plesk accessing Customer's System remotely. A further description of the ordered Services may be included in the corresponding order or support ticket.

## 2. Granted access.

Customer hereby grants permission to Plesk to enter its system via remote access. Furthermore, Customer acknowledges, that Plesk may possibly have to reboot Customer's System after repairs, shut down services while fixing them, create test accounts, install support tools pack or diagnostic utilities if it is required for investigation. Plesk will follow all commercially reasonable security policies for accessing the System, setup and communicated by Partner prior to Plesk accessing the System.

## 3. Customer Obligations.

Customer shall deliver to Plesk all necessary information to allow Plesk to perform the Services, and to respond to any communications from Plesk regarding the Services. **CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE INTEGRITY, ACCURACY, COMPLETENESS, AND RETENTION OF ANY INFORMATION PROVIDED BY CUSTOMER TO PLESK. WITHOUT LIMITATION OF THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT IT HAS CREATED A BACK UP COPY OF ALL DATA THAT MAY BE AFFECTED BY PLESK'S PERFORMANCE OF THE SERVICES. PLESK SHALL NOT BE RESPONSIBLE FOR CREATING BACK UP COPIES OF DATA AND INFORMATION PROVIDED BY CUSTOMER TO PLESK AND SHALL NOT BE LIABLE TO CUSTOMER FOR ANY DAMAGES AND LOSSES, DIRECTLY OR INDIRECTLY RELATED TO LOSS OF DATA, CUSTOMERS OR REPUTATION.**

## 4. Term and Termination.

Plesk shall perform the Services as requested by Customer. The term of such Services and the related access to Customer's System shall continue until Plesk completes the Services or until either Party terminates the request for the performance of the Services. Before the Services' start, Customer shall pay the fees and reimburse to Plesk all expenses pre-approved by Customer as set forth in the corresponding order or Agreement. All unpaid fees and expenses that have accrued through the date of termination are subject to additional late fees and penalties.

## 5. Indemnification of Plesk.

Customer agrees to indemnify, defend and hold Plesk and its subsidiaries and affiliates, and all officers, directors, and employees thereof, harmless from and against any action brought against Plesk with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that: (I) such action is based upon or arises out of a claim that any data or information provided by Customer to Plesk to enable Plesk to perform the Services hereunder violates or infringes upon the rights of any party, including any intellectual property rights of any third party or (II) such action is based upon or arises out of a claim that is related to use by Plesk of data or information provided by Customer to Plesk to enable Plesk to perform the Services hereunder or (III) such action or claim is based upon or arises out of the performance of the Services by Plesk.

## 6. Warranty and Limitation of Liability.

### 1. Warranty by Plesk.

Under this Agreement, Customer only permits Plesk to access Customer's System to provide services to Customer. Plesk does not sell or license goods, except as expressly provided herein. Plesk warrants that it will perform the access and the Services in a workmanlike manner. If certain security policies have been agreed upon in writing before the Services start, Plesk warrants, that such policies will be followed to the maximum extent possible. **THE WARRANTY EXPRESSED IN THIS SECTION IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY PLESK. EXCEPT FOR THIS LIMITED WARRANTY, PLESK MAKES NO OTHER WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, RELATING TO THE SERVICES TO BE RENDERED BY PLESK UNDER THIS AGREEMENT, AND PLESK EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE THAT MAY ARISE IN CONNECTION WITH SUCH SERVICES.**

### 2. Warranty by Customer.

Customer warrants that the rendering of the Services by Plesk will not violate the rights of any third party, including, without limitation, intellectual property rights.

### 3. Limitation of Liability.

For purposes of this Section, "Plesk" includes any and all subsidiaries and affiliates of Plesk International GmbH, and the officers, directors, employees, and agents thereof. Notwithstanding the warranty provisions set forth in Section 6.1 above, all of Plesk's obligations with respect to such warranties shall be limited to the access of the System with respect to the reasonable security policies, agreed upon between the Parties. Plesk shall have no warranty obligations with respect to any failures of the System which are the result of accident, abuse, misapplication, extreme power surge, extreme electromagnetic field or to any delays in the performance of the access directly or indirectly caused by Customer. **CUSTOMER ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH PLESK IS CHARGING PURSUANT TO THIS AGREEMENT DOES NOT INCLUDE ANY CONSIDERATION FOR THE ASSUMPTION BY PLESK OF THE RISK OF THE CUSTOMER'S OR ANY THIRD PARTY'S INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH THE SERVICES. ACCORDINGLY, CUSTOMER HEREBY AGREES, THAT PLESK SHALL NOT BE RESPONSIBLE FOR ANY INDIRECT,**

CONSEQUENTIAL, INCIDENTAL, OR DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFIT, LOST SAVINGS, LOSS OF REVENUES OR LOSS OF DATA, ARISING FROM THE ACCESS TO THE SYSTEM IN ACCORDANCE TO THE AGREED UPON POLICIES, EVEN IF PLESK OR CUSTOMER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS OF LIABILITY SHALL APPLY TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE. IT IS AGREED THAT PLESK'S CUMULATIVE LIABILITY TO CUSTOMER OR ANY PARTY RELATED TO CUSTOMER FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE LIMITED TO THE TYPICAL AND FORSEEABLE DAMAGE, BUT IN NO EVENT TO AN AMOUNT HIGHER THAN THE EQUIVALENT OF US\$ 2,000.00. IT IS THE AGREEMENT OF THE PARTIES THAT THE FOREGOING ALLOCATION OF RISK IS REFLECTED IN THE FEES CHARGED UNDER THE SERVICES AGREEMENT.

Nothing in this Agreement shall be deemed to exclude or limit Plesk's liability in respect of (1) injuries to or death of any person, caused by willful intent or negligence of Plesk or Plesk's representatives, auxiliary persons (executive and non-executive staff) and subcontractors; (2) loss and damages caused by willful intent or gross negligence by Plesk or Plesk's representatives, auxiliary persons (executive and non-executive staff) and subcontractors; (3) any indemnity or guarantee given by Plesk under this agreement - although it is expressly not intended to give any indemnity or guarantee; and (4) any mandatory liability according to the applicable law. In any case, Plesk's liability hereunder shall be limited to the minimum required by the applicable law.

#### 4. Each party:

(a) has the full right and authority to enter into this Agreement and grant the rights granted herein

(b) has obtained all necessary approvals, if any, for entering into this Agreement.

## 7. Confidentiality

### 1. Ownership of Confidential Information.

The Parties acknowledge that during the performance of the Services, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

### 2. Mutual Confidentiality Obligations.

Each Party agrees as follows:

- (i) to use the Confidential Information only for the purposes described herein;
- (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party;
- (iii) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party;

- (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and
- (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

## 8. General Terms.

### 1. Governing Law and Choice of Forum.

This Agreement shall be governed by and interpreted in accordance with the applicable laws of Switzerland. Agreed place of jurisdiction shall be Zürich / Switzerland.

### 2. Independent Contractor.

Plesk is an independent contractor for all purposes. Neither Plesk nor its subcontractors, nor the employees or agents thereof, shall be deemed to be employees or agents of Customer. Plesk may use contractors or other third parties of Plesk's choice to assist Plesk in rendering the Services hereunder. Nothing herein or in the performance hereof shall imply either a joint venture or principal and agent relationship between the parties, nor shall such a relationship be deemed to have arisen under this Agreement.

### 3. Survival.

Articles 5, 6, 7 and 8 of this Agreement and all Sections thereof, shall survive the termination of this Agreement, regardless of the cause for termination, and shall remain valid and binding in perpetuity.

### 4. Force Majeure.

Neither party shall have liability for damages or delays in performance due to natural disasters, power surges or failures, strikes or labor disputes, acts of god, war, civil disturbances, acts of civil or military authorities or the public enemy, or other causes beyond either party's control.

### 5. Notices.

All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and may be sent by: (I) personal delivery; (II) registered mail; (III) expedited delivery service; (IV) facsimile; or (V) electronic mail. Notices to either party shall be addressed to its address indicated on the first page of this Agreement, or such other address as the party may designate through notice hereunder. Notices will be deemed communicated upon receipt, provided that receipt of any such notice is verified through commercially reasonable means.

### 6. Non-Solicitation.

During the term of this Agreement and for a period of one (1) year after the termination of this Agreement, Partner shall neither directly or indirectly solicit, discuss employment with, offer employment to, nor otherwise use, hire, or utilize the services of any employee of Plesk

or any person who has been employed by Plesk within one (1) year prior to the date of solicitation, hiring, or other such activity.

#### 7. Entire Agreement.

This Agreement is the entire agreement between the parties and supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning Plesk's rendering of the Services to Customer. This Agreement is subject to changes made by Plesk from time to time and published on the Plesk website and shall at all times be valid and binding in its most current version between Plesk and the Customer. This Agreement may be electronically accepted by either Party in the process of ordering the Services. The acceptance of this Agreement is indispensable condition for the provision of any Services by Plesk.

#### 8. Severability.

If any provision of the Agreement or part thereof is held invalid by a court with jurisdiction over the parties to the Agreement, such provision or part thereof will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remainder of the Agreement and the respective clause will remain in full force and effect. The remainder of the Agreement or clause will continue in effect as if the Agreement had been entered into without the invalid portion.