

LiveACID Web Hosting EULA & Consumer Agreement

This EULA and Consumer Agreement (this “Agreement”) contains the terms and conditions that govern your access to and use of the Service Offerings (as defined below) and is an agreement between CookieCutter Solutions, Inc. or LIVE ACID SOFTWARE (“LiveACID,” “we,” “us,” or “our”) and you or the entity you represent (“you”). This Agreement takes effect when you click an “I Accept” button or check box presented with these terms or, if earlier, when you use any of the Service Offerings (the “Effective Date”), or, if earlier, you have paid an invoice from LiveACID for any of the Service Offerings, including website hosting. You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. Please see Section 6 for definitions of certain capitalized terms used in this Agreement.

1. CONFIDENTIAL INFORMATION AND PROPERTY RIGHTS

1.1 Confidential information

1.1.1 Each of us agrees not to use the other’s Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, as may be required by law, or as set forth below.

Each of us agrees not to disclose the other’s Confidential Information to any third person except as follows:

1.1.2 to each of our respective service providers, employees, Affiliates, suppliers, agents and representatives, provided that such service providers, employees, Affiliates, suppliers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this General Terms and Conditions; or

1.1.3. to a law enforcement or government agency if either of us reasonably believes that the other’s conduct may violate applicable criminal law;

1.1.4. as required by law; or

1.1.4. in response to a court order or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this clause (or prompt notice in advance of disclosure, if seven (7) days advance notice is not reasonably feasible), unless the law forbids such notice.

1.2 Property Rights

1.2.1 Your Content. As between you and us, you or your licensors own all right, title, and interest in and to Your Content. Except as provided in this Section 8, we obtain no rights under this Agreement from you or your licensors to Your Content, including any related intellectual property rights. You consent to our use of Your Content to provide the Service Offerings to you and any End Users.

1.2.2 Your Submissions. Your Submissions will be governed by the terms of the Apache Software License, unless you specify one of our other supported licenses at the time you submit Your Submission.

1.2.3 Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Your Submissions; (b) you have all rights in Your Content and Your Submissions necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content, Your Submissions or End Users' use of Your Content, Your Submissions or the Services Offerings will violate the Acceptable Use Policy.

2. YOUR RESPONSIBILITIES:

2.1 Your Content.

2.1.1 Unless otherwise entered into a Development Agreement with LiveACID;

You are solely responsible for the development, content, operation, maintenance, and use of Your Content. For example, you are solely responsible for:

(a) the technical operation of Your Content, including ensuring that calls you make to any Service are compatible with then-current APIs for that Service;

(b) compliance of Your Content with the Acceptable Use Policy, the other Policies, and the law;

(c) any claims relating to Your Content; and

(d) properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Your Content violate such person's rights, including notices pursuant to the Digital Millennium Copyright Act.

2.2 End User Support. You are responsible for providing customer service (if any) to End Users. We do not provide any support or services to End Users unless we have a separate agreement with you or an End User obligating us to provide support or services.

3. SUSPENSION OF SERVICES

3.1 We may suspend Services without liability if:

3.1.1 we reasonably believe that the Services are being used in breach of the Agreement;

3.1.2 you don't cooperate with our reasonable investigation of any suspected violation of the Agreement;

3.1.3 there is an attack on your servers or your website is accessed or manipulated by a third party without your consent;

3.1.4 we are required by law or a regulatory or government body to suspend your Services; or

3.1.5 there is another event for which we reasonably believe that the suspension of Services is necessary to protect the LiveACID network or our other customers.

3.1.6 you fail to pay the fees associated with the service

3.2 We will give you advance notice of a suspension under this clause of at least twelve (12) Business Hours unless we determine in our reasonable commercial judgment that a suspension

on shorter or contemporaneous notice is necessary to protect LiveACID or its other customers from imminent and significant operational, legal, or security risk. If your Hosted System is compromised, then you must address the vulnerability prior to LiveACID placing the Hosted System back in service or, at your request, we may be able to perform this work for you at our standard hourly rates as a Supplementary Service.

4. LIMITATION ON DAMAGES

4.1 LiveACID will not be liable in any way for any special, incidental, economic, or indirect loss or damages, or for loss of data, loss of profits, revenues, customers or contracts, wasted management time, increased costs or expenses, whatsoever and howsoever arising including in connection with the performance, non-performance or delayed performance of the Services or otherwise under this Agreement even if we have been advised by you or should have reasonably been aware of the possibility of such loss.

5. Fees and Payment

5.1. Service Fees. We calculate and bill fees and charges monthly. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for use of the Service Offerings as described by LiveACID using one of the payment methods we support. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service or new feature of a Service will be effective when we post updated fees and charges to you unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services by giving you at least 30 days' advance notice. We may charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

6. Definitions.

“Account Information” means information about you that you provide to us in connection with the creation or administration of your LiveACID hosted website account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with your LiveACID hosted website account.

“LiveACID Site” means <http://liveacid.com> and any successor or related site designated by us.

“Content” means software (including machine images), data, text, audio, video, or images.

“End User” means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service Offerings under your account. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Content under their own LiveACID account, rather than your account.

“Service Offerings” means the Services (including associated APIs), the LiveACID Content, any LiveACID Website, and any other product or service provided by us under this Agreement. Service Offerings do not include Third Party Content.

“Your Content” means Content that you or any End User transfers to us for processing, storage or hosting by the Services in connection with your LiveACID account and any computational results that you or any End User derive from the foregoing through their use of the Services. For example, Your Content includes Content that you or any End User stores on LiveACID’s Servers or the servers that they are hosting your information on. Your Content does not include Account Information.

“Your Submissions” means Content that you post or otherwise submit to developer forums, sample code repositories, public data repositories, or similar community-focused areas of the LiveACID Services.

“Development Agreement” An Agreement between you and LiveACID in which case LiveACID will offer development services to develop your website or software within the terms of the agreement