

For Elliptics branded products:**Webcrossing Core, Webcrossing Community, Webcrossing Neighbors**

By using Elliptics' products, software, services and hosted websites (referred to collectively as the "Services") you acknowledge that you ("Your", "Licensee") have read and agree with this Terms of Service Agreement ("TOS", "Agreement", "TOS Agreement"), Elliptics means "Elliptics, Ltd.", "Our".

This TOS Agreement excludes services provided under separately written agreements.

This TOS Agreement is subject to change from time to time. You can review the most current version of the TOS at any time at <http://elliptics.com>. Use of the Services after a change will subject you to the new terms. IF YOU DO NOT AGREE TO THESE TERMS DO NOT USE THE SERVICE.

1. ACCOUNT SETUP

We will setup your account after we have approved payment terms. If there is ever an abuse issue or we need to contact you for billing purposes, the primary email address on file will be used for this purpose. It is your responsibility to ensure your email address on file is up to date.

2. DEFINITIONS

The following expressions shall have the meanings provided below:

- 2.1. "Terms of Service" means the terms and conditions as set forth in this document.
- 2.2. "Hosting Plan" means the structure and fees associated with the Hosting Services.
- 2.3. "Hosting Services" means the act of running Licensor's Software on Licensor's servers on behalf of Licensee. Elliptics currently provides all hosted services utilizing Virtual Private Servers (VPS) from VPS providers in several geographic locations.
- 2.4. "Professional Services" means technical and strategic functions performed on behalf of Licensee by Licensor including setup, customization, development and site management.
- 2.5. "Software" means the proprietary "Executable" (also referred to as the "Binary" and the "Object Code"), the "Database" and other system files, scripts and sub-directories in an Instance directory hierarchy which are supplied by the Licensor and which are required to run, maintain and document the Instance for Elliptics branded products: Webcrossing Community and Webcrossing Neighbors.
- 2.6. "Upgrades" or "Updates" means revisions and/or enhancements to the Software and Documentation as may occur from time to time.
- 2.7. "Instance" means a single installation of the Software on a single computer, existing in its own root system directory hierarchy.
- 2.8. "Database" means the database generated by and updated by an Instance of the Software.
- 2.9. "Content" means all data added by the Licensee or Licensee designee(s) to the Database and all other content created by the Licensee or Licensee designee(s) which resides within an Instance directory hierarchy.
- 2.10. "Documentation" means any documentation, specifications or technical information or material generally provided by the Licensor in conjunction with the Software.
- 2.11. "Licensor's Trademarks" means "Elliptics, Webcrossing Community, and Webcrossing Neighbors" plus any future trademarks owned or licensed by Licensor.
- 2.12. "Server" or "Servers" means the physical machine or machines including virtual machines on which the Software will be installed and run.
- 2.13. "Dedicated Server" means the Server is used exclusively for a single customer.

- 2.14. "Maintenance" means the time a site is unavailable due to Upgrade, Updates or resolving hardware/network issues.
- 2.15. "Uptime Goal" means the percent of time the site is available and excludes scheduled maintenance, outages occurring while making customer requested changes to the website, or circumstances beyond our control such as network outages, or outages in the VPS datacenter (Virtual Private Server).
- 2.16. "Site" means a website with a unique IP address, site name and Elliptics site number. Each Site has a separate Hosting Plan and associated fees.
- 2.17. "Cluster" means a set of Instances on one or more computers, each with an exact copy of the same Database and other Content, with a master node plus one or more subordinate mirrored nodes, each under control of the master. An Instance with a unique Database is not part of a Cluster.
- 2.18. "Development Environment" means an Instance used only for development and testing, or internal training, and not available to anyone beyond the training or development and testing team(s). A production Instance is not a Development Environment.

3. PRIVACY POLICY

Elliptics publishes our Privacy Policy at our corporate website at <http://elliptics.com>.

4. GRANT OF RIGHTS

- 4.1. License: Subject to the terms and conditions set forth in this Agreement and payment of applicable Service fees, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a limited, non-exclusive, non-transferable, license to:
 - 4.1.1. Use the Software, hosted by Licensor, for all legal uses contemplated by this Agreement;
 - 4.1.2. Permit Licensee and its clients and end users to access the Software through the Web Site and use the Software, for all legal uses contemplated by this Agreement;
 - 4.1.3. Permit Licensee personnel to access the Software in connection with creating and testing modifications to the Software prior to introducing it to the Web Site. Access may be to the production site or in a Development Environment.
- 4.2. Restrictions on License: The license granted in this Agreement shall be limited as follows:
 - 4.2.1. Except as permitted hereunder, Licensee shall not copy or reproduce the Software nor distribute all or any portion of the Software to any person or entity;
 - 4.2.2. Licensee shall not reverse engineer, decompile, or otherwise attempt to determine the source code or algorithms of the Software;
- 4.3. Transfer of Agreement: This Agreement may not be transferred without approval by Licensor and Licensee. Approval will not be unreasonably withheld.
- 4.4. Ownership of Content: The Database Content is the property of Licensee. The Licensee is entitled to a copy of the database or a Webcrossing SGML-formatted text file containing all the database information, and will be made available to Licensee upon request. Fees may apply for duplicate or customized copies.

5. TECHNICAL SUPPORT

Technical support options and services depend on your Hosting Plan. Elliptics Technical Support is available at: <http://elliptics.com/support-resources>. If you have questions about technical support options for your Hosting Plan, contact Elliptics sales at sales@elliptics.com for a description of your Elliptics Hosting Plan.

6. PROFESSIONAL SERVICES

Professional Services are available for a separate fee. However, some Professional Services may be bundled with your Hosting Plan. More information about Professional Services is available at: <http://elliptics.com/webcrossing-professional-services>.

If you are interested in Elliptics Professional Services contact Elliptics sales at sales@elliptics.com to get a price estimate.

7. CONSIDERATIONS

- 7.1. Payment of Fees: Licensee agrees to provide payment for Services requested and used by Licensee.
- 7.2. Hosting Service fees will not be increased during the first six months of service. After the first six months of service, Elliptics reserves the right to change prices and institute new fees at any time upon 30 days prior notice. For more information about Hosting Plans contact Elliptics Sales at sales@elliptics.com.
- 7.3. We reserve the right to refuse service to anyone. Any material that, in our judgment, is obscene, threatening, illegal, or violates the Terms of Service described herein, may be removed from our servers (or otherwise disabled), with or without notice.
- 7.4. We take a zero tolerance stance against sending of unsolicited e-mail, bulk emailing, and spam. "Safe lists" and purchased lists will be treated as spam. Any user who sends out spam will have their account terminated with or without notice.
- 7.5. Service Level Agreement (SLA): Our goal is to have the highest level of uptime possible, but hardware, software and networks have issues. When possible we schedule maintenance with you in advance, so we can limit site and user interruptions. If your site has downtime in excess of the uptime goal for your Hosting Plan, you may request a pro rata credit for the downtime.

8. CANCELLATION

- 8.1. If you are dissatisfied with the Service or any related terms, conditions, rules, policies, guidelines, or practices, you can cancel your account or a specific site in accordance with the terms of this Agreement.
- 8.2. If you cancel your Hosting Service prior to completing your Hosting Plan, you agree to pay Elliptics the early termination fees set forth in your Hosting Plan.
- 8.3. Delinquent accounts may be suspended or canceled at the sole discretion of Elliptics. If you pay your monthly Service fee to a third party provider, your account also may be suspended for non-payment if your account is delinquent. If your account is suspended, you may be charged a reinstatement fee to reactivate your account.
- 8.4. To cancel the Hosting Service or cancel a specific site you must do the following:
Email your cancellation request to sales@elliptics.com. You will receive a conformation email with options to shut down your site(s).
- 8.5. The term for hosting is month-to-month with a one-month cancellation notice. If you cancel, the cancellation is effective for the following month.

9. LIMITED WARRANTY

Licensor warrants that the Software will substantially achieve the functionality described in the documentation provided with the Software. Licensor does not warrant, however, that Licensee's use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure. In addition, the security mechanism implemented by the Software has inherent limitations and Licensee is solely responsible for determining that the Software sufficiently meets Licensee's security and operational needs. Licensor's sole liability for any breach of this warranty shall be to refund up to one month's hosting fees (if paid by Licensee). Only if Licensee informs Licensor of Licensee's problem with the Software during the term of the hosting service will Licensor be obligated to honor this warranty.

THIS IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY LICENSOR. LICENSOR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. NO LICENSOR DEALER, AGENT, OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY.

Some states or jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to this Agreement. This warranty gives Licensee specific legal rights; however, Licensee may have other legal rights that vary from state to state or by jurisdiction.

10. INDEMNIFICATION AND LIABILITY PROVISIONS

- 10.1. Indemnification: Licensor has no responsibility for the content carried on Licensee's hosted site. Licensee will indemnify and hold harmless Licensor for any third party claims, allegations or legal actions brought against Licensor as a result of licensee's use of Licensor's product/service offering and will hold Licensor harmless for any attorney fees, court costs, damages or other liabilities. Licensee will promptly inform Licensor of any claims or suits and will cooperate with Licensor in any defense. Both parties shall further indemnify the other against the other's improper disclosure or use of any information transmitted by a client on the Web Site.
- i) In the event use of the Software becomes, or in Licensor's reasonable opinion is likely to become, the subject of a claim of infringement of a patent, copyright or other proprietary right, it is Licensor's option to remedy the situation by (i) procuring the continuing right to use the Software, or (ii) replacing or modifying the Software so that it no longer infringes, or (iii) terminating the hosting agreement.
 - ii) Licensor represents that as of the Effective Date there are no known or expected claims that the Software infringes a patent, copyright or other proprietary right of a third party and further represents that the Software does not infringe a patent, copyright or other proprietary right of a third party.
- 10.2. Limitation on Liability: EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, LICENSOR, ITS SUPPLIERS, AGENTS, AND ASSIGNEES SHALL NOT BE LIABLE TO LICENSEE OR ITS AGENT OR ASSIGNEES FOR ANY DIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR FOR ANY DAMAGES IN EXCESS OF ONE MONTH'S HOSTING FEES (ACTUALLY PAID BY LICENSEE), EVEN IF LICENSOR HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, SOME STATES AND JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE.

11. GENERAL PROVISIONS

- 11.1. Waiver: Waiver of any term or provision of this Agreement or forbearance to enforce any term or provision by either party shall not constitute a waiver as to any subsequent breach or failure of the same term or provision or a waiver of any other term or provision of this Agreement.
- 11.2. Severability: If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
- 11.3. Force Majeure: Neither party shall be liable for any delays or failures in performance caused by events or circumstances beyond its reasonable control. In case of the occurrence of such an event or circumstance, the date of performance shall be deferred for a period equal to the time

lost by reason of the delay. The affected party shall promptly notify the other party in writing of such events or circumstances upon their occurrence.

- 11.4. Dispute Resolution: In the event of a dispute or alleged breach under this Agreement, the parties will work together, in good faith, first to resolve the matter internally and then, if necessary, to use a mutually agreed upon arbitration service, under the then current rules of the American Arbitration Association by one (1) arbitrator appointed in accordance with such rules. The arbitrator may grant injunctive or other relief, but except as provided by the rules, the arbitration will be the sole, exclusive and final remedy for any dispute between the Company and Contractor. The parties agree that the arbitrator shall have no authority to award, punitive or exemplary damages against any party. The prevailing party in such legal proceedings shall be entitled, in addition to such other relief as may be granted, to recover reasonable attorneys' fees and costs including administrative and arbitrator's fees in such legal proceedings from the non-prevailing party. This provision shall not apply to disputes involving confidentiality or infringement of intellectual property rights, in which case either party shall be free to seek available remedies in the proper forum.
- 11.5. Governing Law: The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Nevada except as governed by Federal law.
- 11.6. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.