

# Service Terms and Conditions

**EFFECTIVE JANUARY 1, 2015**

These Service Terms and Conditions (“Agreement”) constitute a contract between DemonShield.com (“DS”) and you as the user/subscriber. This Agreement includes and incorporates the webpage order form from which Customer purchased the Services and any subsequent written, electronic or telephone orders, as well as the accompanying Terms and Conditions.

By accessing or using DemonShield software and services (collectively, the “Services”), you agree to be bound by this Agreement. If you are entering into this Agreement on behalf of a company, organization or other entity, you represent that you have such authority to bind such entity to this Agreement and are agreeing to these Terms and Conditions on behalf of such entity. If you do not have such authority to enter into this Agreement or do not agree with these Terms and Conditions, you are not authorized to use these Services.

## 1. DEFINITIONS

1.1 “Customer” means the individual or legal entity that has signed up for the Services and agreed to the terms of this Agreement.

1.2 “Order Form(s)” means the invoice or other forms from DS for the initial order for the Service, and any subsequent invoice or other forms from DS (submitted in written form, online or via phone), specifying the purchase of any subscription, services or other charges as agreed between the parties.

1.3 “Payment Schedule” means the schedule selected by Customer for payment of Fees (on either an order webpage or an attached Order Form), which may be either monthly by credit card or annually invoiced in advance, with payment due within thirty days of receipt of invoice.

1.4 “Services” means the software products and services that are ordered by and/or made available to Customer under a free trial or an Order Form and made available online by DS.

1.5 “Term” means the subscription term indicated on the Order Form and any subsequent renewal terms.

1.6 "User" means any user of the Services who Customer may authorize to use the Services under the terms of this Agreement.

1.7 The terms "you" or "your" refer to the individual using the Services, if an individual is using the Services, or the individual entering into this Agreement on behalf of a legal entity for such legal entity to use the Services.

## 2. SERVICES FOR CUSTOMER

2.1 Subject to full compliance with the terms and conditions of this Agreement, DS will provide the Services to Customer. The Services are subject to modification from time to time at DS's sole discretion, for any purpose deemed appropriate by DS. DS will use reasonable efforts to give Customer prior written notice of any such modification.

2.2 DS will make the Services available and the Services will perform substantially in accordance with the description of the services found at [www.demonshield.com](http://www.demonshield.com). Notwithstanding the foregoing, DS reserves the right to suspend Customer's (or any of its users') access to the Services: (i) for scheduled or emergency maintenance, or (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to DS.

## 3. CUSTOMER RESPONSIBILITIES

3.1 Use of the Services may require Customer's consistent implementation of the DS software without restriction by Customer or 3<sup>rd</sup> parties. DS is not responsible for the lack of functionality due to conflicts with operation platforms, hardware, security systems or any other software.

3.2 Customer will cooperate with DS in connection with the performance of this Agreement as may be necessary, which may include making available such personnel and information as may be reasonably required to provide the Services or support.

3.3 On the Customer's administrative interface, Customer may designate employee(s) who will be the primary contact(s) for DS.

#### 4. RESTRICTIONS

Customer will not, and will not permit any of its users nor any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover any DS code, object code or underlying structure, ideas or algorithms of the Services, Software, or any data related to the Services (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Services or Software; share, rent, lease, loan, resell, sublicense, distribute, use or otherwise transfer the Services or Software for timesharing or service bureau purposes or for any purpose other than its own use; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any United States privacy laws and intellectual property laws).

#### 5. CONFIDENTIALITY

5.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") (and collectively the "Parties") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Confidential Information" of the Disclosing Party).

5.2 The Receiving Party agrees: (i) not to divulge to any third person any such Confidential Information, (ii) to give access to such Confidential information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Confidential information that the party takes with its own confidential or proprietary information, but in no event will a party apply less than reasonable precautions to protect such Confidential Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Confidential Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, DS may collect data with respect to and report on usage and other aggregate measures of the Services' performance.

5.3 Customer acknowledges that DS does not wish to receive any Confidential Information from Customer that is not necessary for DS to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, DS may reasonably presume that any unrelated information received from Customer is not confidential or Confidential Information.

5.4 Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1 Except as expressly set forth herein, DS alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Services or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services and/or the Software, which are hereby assigned to DS. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services or Software, or any intellectual property rights.

## 7. PAYMENT OF FEES

7.1 Customer will pay DS the applicable fees as set forth on the Order Form (the "Fees") plus all applicable sales, use and other purchase related taxes. If the method of payment is by credit card, Customer agrees to (a) keep Customer's credit card information updated and (b) authorize DS to charge Customer's credit card the Fees as and when due until cancelled by Customer. All payments will be charged to Customer in accordance with the payment schedule.

7.2 If a Customer cancels before the end of any free Service or trial period, DS will not charge Customer any fees for use of such free Services. Such Customer may discontinue using the free Services at any time, but must immediately notify DS and remove any software received under DS Services from its devices. If Customer does not cancel prior to the free trial period end, DS reserves the right to charge Customer monthly at its current rates until cancellation is received from Customer.

7.3 Unpaid Fees are subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys' fees. Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property and similar taxes, if any. Customer agrees to pay such taxes (excluding US taxes based on DS's net income) unless Customer has provided DS with a valid exemption certificate. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Customer on account thereof.

## 8. TERMINATION

8.1 Subject to earlier termination as provided below, this Agreement is for the Term as specified in the Order Form.

8.2 In the event of any material breach of this Agreement by Customer, DS may terminate this Agreement without notice. DS may also terminate this Agreement, without notice, (i) upon the institution by or against Customer's insolvency, receivership or bankruptcy proceedings, (ii) upon Customer making an assignment for the benefit of creditors, or (iii) upon Customer's dissolution or ceasing to do business. For Customers using free services, DS may terminate this Agreement at any time with or without notice and DS reserves the right to disable such Customers' access to or use of the Services at any time with or without notice for any reason or no reason.

8.3 Customer's may terminate this Agreement at any time with notice to DS; however no refund or partial refund will be provided to Customer for any unused prepaid period(s) of service, regardless of termination, neither allegedly with or without cause. Customer agrees that such termination forfeits all prepaid future Service and monetary credit(s) immediately upon termination of this Agreement.

## 9. WARRANTY DISCLAIMER

THE SERVICES AND DS CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. DS HEREBY DISCLAIMS FOR ITSELF AND ITS SUPPLIERS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

## 10. LIMITATION OF LIABILITY

IN NO EVENT WILL DS OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF DS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

THE TOTAL LIABILITY OF DS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE THE FEES PAID TO DS HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

BY USE OF THE DS SERVICE, CUSTOMER AFFIRMS THEIR FULL UNDERSTANDING AND AGREEMENT THAT NO SECURITY SOFTWARE, (INCLUDING DS SERVICE(S)) IS COMPLETELY EFFECTIVE IN PROTECTING ANY DOMAIN(S), (INCLUDING BUT NOT LIMITED TO WEBSITE CONTENT, DATABASE INFORMATION, PROPRIETARY INFORMATION, AND/OR SERVER ACCESS) AGAINST MALICIOUS INTENT, AND ACKNOWLEDGES THEIR USE OF THE SERVICE IS AT THEIR SOLE RISK. CUSTOMER FURTHERMORE AGREES TO NOT HOLD DS LIABLE FOR ANY LOSS OF DATA, SECURITY BREACHES, INCOMPATIBILITY, ALERT FAILURES, UNAUTHORIZED ACCESS AND/OR ANY OTHER DAMAGES FROM THE USE OF DS SERVICE(S) OR THE INABILITY OF DS SERVICE(S) TO PROVIDE INFALLIBLE PROTECTION.

## 11. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer to any other entity except with DS's prior written consent. DS may transfer and assign any

of its rights and obligations under this Agreement with written notice to Customer. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind DS in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and/or upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. DS may provide notice using the information provided in the most recent Order Form and Customer may provide notice using the contact information provided on [demonshield.com](http://demonshield.com). DS will not be liable for any loss resulting from a cause over which it does not have direct control. Any dispute arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration by the Better Business Bureau. Judgment upon the award so rendered may be entered in a court having jurisdiction, or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator. If Customer is using the Service and for thirty (30) days thereafter, Customer grants DS the right to identify Customer and use Customer's name and/or logo(s) on DS's website or other marketing or advertising materials.