

# Terms of Use for ESTEQ Services

SEPTEMBER 15, 2016

These Terms of Use are part of any services agreement (“Services Agreement”) for ESTEQ Services (the “Services”) between Client and an authorized seller of ESTEQ Services (“Distributor”). A Services Agreement may be a signed agreement or be an order submitted by Client and accepted by Distributor that specifies the Services to be provided by ESTEQ. These terms will be fixed for the duration of the initial term of the Services Agreement. If the Services Agreement is renewed, the version of these Terms of Use that is current at the time the renewal term commences will apply throughout the renewal term.

## A. Right to use the Services; Trademark License; Ownership Rights

Subject to the provisions of the Services Agreement, Client is granted a nonexclusive, non-transferable, non-sublicensable, revocable, fee bearing, limited right to access and make use of the Services for Client’s purposes. Client agrees not to (i) sell, license (or sub-license), lease, assign, transfer, pledge, or share any of its rights under this Agreement with or to anyone else; (ii) modify, alter, reverse engineer, disassemble, de-compile, translate the Services and/or accompanying documentation, or grant any third party the right to do so; or (iii) violate any applicable laws or use the Services for any activities or content that is illegal under applicable law. ESTEQ™, the ESTEQ logo, and other ESTEQ’s graphics, logos and service names are trademarks, service marks, or other trade dress of ESTEQ or its affiliates. ESTEQ’s trademarks, service marks, and trade dress have inherent meaning and substantial value because of their restricted use. ESTEQ hereby grants Client a license to use ESTEQ’s name and logo on its website solely to identify ESTEQ as Client’s service provider. They may not be used in connection with any other product or service without ESTEQ’s written permission.

All intellectual property rights evidenced by or embodied in the Service, are owned exclusively by ESTEQ and its suppliers. The rights granted to Client are limited to those expressly stated in these Terms of Use and in any Services Agreement. No additional rights or licenses are being granted by implication or otherwise and all such rights and licenses are expressly reserved. Any ideas, suggestions, modifications and the like made by Client with respect to the Services will be the property of ESTEQ regardless of whether ESTEQ chooses to exercise its rights to incorporate such ideas, suggestions or modifications into the Services.

Client consents to ESTEQ and its affiliates using its name and logo to identify Client as a customer of ESTEQ Services. Any use shall be subject to compliance with guidelines that Client may deliver to ESTEQ from time-to-time regarding the use of its name and logo. This consent terminates upon termination of the Services Agreement.

## B. Access Requirements and Restrictions

Except as explicitly set forth herein, Client is solely responsible for acquiring and maintaining all of the equipment, software and services necessary to access and make use of the Services, including without limitation paying all fees and other costs related to internet access and for configuration changes that may be required to route activity to the Services. Client may access the Services only through the interfaces and protocols provided or authorized by ESTEQ and its partners and agrees to set up, maintain and use the Services in strict compliance with ESTEQ’s and its partners’ instructions. Client agrees that it will not access the Services through unauthorized means. As a prerequisite for provision of the Services, Client hereby agrees to ensure that all traffic to its site will be rerouted to the applicable IP address as set forth in the applicable ESTEQ set up procedure and shall fully comply with all ICANN rules and regulations and any applicable internet registrar procedures. In the event of expiration or termination of any Services that require DNS routing, Client will be solely responsible for rerouting its DNS traffic back to its IP address and Distributor, ESTEQ, its partners and suppliers shall have no liability for Client’s failure to do so.

## C. Protection of Information

Upon registration and/or use of the Services, Client shall be required to provide information (including user name, password and billing information). Client agrees to provide true, accurate,

complete and current information. Client is solely responsible for maintaining the confidentiality of any passwords and account information required to access Services, for all acts that occur in connection with Client's account and to immediately notify ESTEQ of any unauthorized use of Client's account. Client is solely responsible for any information it provides in connection with the Services and its use thereof. Client consents to ESTEQ's use of such information in accordance with ESTEQ's privacy policy and warrants that it has all rights and permissions necessary to transfer such information to ESTEQ for ESTEQ's use in its worldwide operations.

## **D. Services**

Client acknowledges that the Services offer a platform to cache, serve, monitor and optimize web pages and web sites and is not offered for other purposes, such as remote storage. Client agrees that for the purpose of enabling the provision of the Services, ESTEQ may cache on its servers content and/or meta data contained in Client's site and/or sent to Client's site ("Client's Content"), including without limitation rerouting Client's Content and all traffic directed to Client's site to another ESTEQ designated IP address. Client hereby grants ESTEQ and its partners a nonexclusive, worldwide, fully paid-up, royalty-free license to use, transfer, display, minimize and compress Client's Content solely for the purpose of providing and improving the Services. Such license will apply to any form, media, or technology now known or hereafter developed. Client hereby warrants and represents that: (i) it is the sole owner of and/or holds all necessary rights in and to Client's Content; (ii) there are no restrictions which prevent or restrict Client from granting ESTEQ the license above. ESTEQ is not a back-up service and does not keep a copy of Client's Content. If Client's right to use the Services is terminated or is not renewed, ESTEQ may, without notice, deny access to any of Client's Content or delete or deny access to any data that may remain in its possession or control. ESTEQ acknowledges that content of Client's site and information its users send to the site is Client's confidential information and it will not disclose such information to third parties.

## **E. Indemnification**

Client agrees to indemnify, defend and hold harmless ESTEQ, its officers, directors, employees, stockholders, affiliates, agents and suppliers, from and against any and all third party claims and the related damages, losses or expenses, including but not limited to attorneys' fees and costs, arising out of or in any way connected with Client's Content or websites, including without limitation any claims relating to the accessibility of Client's website and any collection, use, or export of personal information or other data.

## **F. Eligibility**

Without limiting the foregoing, the Services are not available where they are illegal to use, and ESTEQ reserves the right to refuse and/or cancel services to anyone at its own discretion if it believes that they are being used in violation of an applicable law or if instructed to do so by any legal authority.

Client agrees to comply with all applicable export laws and restrictions and regulations.

## **G. Acceptable Use**

Client agrees to comply with all applicable rules regarding online conduct and the collection and transmission of data, including all laws, rules, codes and regulations of the countries in which Client operates and from which it gathers data.

The Services are a shared web caching service, which means a number of customers' web sites are cached on the same server. To ensure that the Services are reliable and available for the greatest number of users, Client's usage cannot adversely affect the performance of other customers' sites.

Client agrees that it will not:

- Transmit data unless it has obtained all authorizations required by law or by the owners of the data, including any consent required from data subjects for collection, use and transmission to other countries;
- Transmit, or otherwise make available any content that infringes any patent, trademark, trade secret, copyright, or other proprietary rights of any party;

- Transmit, or otherwise make available any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- Interfere with or disrupt the Service or servers or networks connected to the Service;
- Transmit, or otherwise make available any content that violates any applicable laws or regulations, including export laws and regulations, or that is harmful, threatening, abusive, defamatory, or libelous;

Client agrees to be solely responsible for its users' compliance with these terms.

Client agrees that if, at ESTEQ's and its partners' sole determination, Client is using the Services in violation of this Section or creates an excessive burden or potential adverse impact on ESTEQ's, its partners' or its suppliers' systems, business or customers, ESTEQ, its partners or suppliers may flag or block content or suspend or terminate Client's access to the Services without notice to Client and ESTEQ will have no liability to Client regarding the deletion, blocking or removal of content or the suspension or termination of Services.

## **H. Disclaimers**

DISTRIBUTOR, ESTEQ AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ANY EXPRESSED OR IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

ESTEQ MAKES NO WARRANTY THAT:

- 1 THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS;
- 2 THE APPLICABLE SITE TO WHICH CLIENT'S TRAFFIC IS ROUTED WILL BE AVAILABLE AT ALL TIMES, UNINTERRUPTED OR FREE FROM DOWNTIME OR INOPERABILITY;
- 3 THE SERVICES WILL WITHSTAND ATTEMPTS TO EVADE SECURITY MECHANISMS OR THAT THERE WILL BE NO BREACH OF THE SERVICES' SECURITY MEASURES.

## **I. Limitation of liability**

IN NO EVENT SHALL ESTEQ, DISTRIBUTORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, INCOME, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, WHETHER IN CONTRACT, TORT OR UNDER ANY THEORY OF LIABILITY EVEN IF ESTEQ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL AND AGGREGATE LIABILITY OF ESTEQ, DISTRIBUTORS AND THEIR AFFILIATES AND SUPPLIERS TO CLIENT OR ANY THIRD PARTY SHALL BE LIMITED TO THE AMOUNT OF FEES PAID BY CLIENT FOR THE SERVICES DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM.

CLIENT ACKNOWLEDGES AND AGREES THAT ESTEQ AND DISTRIBUTORS HAVE OFFERED THE SERVICES AND SET THEIR PRICES IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN CLIENT, DISTRIBUTOR AND ESTEQ. ESTEQ WOULD NOT BE ABLE TO PROVIDE THE SERVICES ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

## **J. Term; Termination.**

The Services Agreement will automatically renew for an additional term equal to the length of the previous term unless Client gives notice of non-renewal at least thirty (30) days' prior to the end of the then-current term. Distributor may suspend or terminate the Services without notice if: (i) Client fails to timely pay any undisputed amounts; or (ii) Client breaches the terms of Acceptable Use. Upon termination of the applicable Services Agreement, any provision of these Terms of Use which, by its nature or express terms should survive, will survive such termination or expiration,

including, but not limited to the following Sections: Indemnification, Disclaimers, Limitation of Liability, Applicable Law and General.

## **L. Notices; Changes to Terms of Use.**

ESTEQ may provide Client with notices, including those regarding changes to ESTEQ's Terms of Use, by email or by posting a notice on Client's account page.

## **M. Assignment**

The Services Agreement and any rights granted under these Terms of Use, may not be transferred or assigned by Client without the Distributor's written consent, but may be assigned by the Distributor without restriction. Any attempted assignment in violation of this Section shall be void. The Services Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

## **N. Applicable Law**

The Services Agreement and any action related thereto shall be governed by the laws of the Lithuania, without regard to the conflicts of law provisions thereof. The parties to the Services Agreement hereby consent to the exclusive jurisdiction and venue of state and federal courts located in Vilnius, Lithuania or for the purpose of any such action.

## **O. General**

The parties are independent contractors and nothing in the Services Agreement or these Terms of Use authorizes a party to act as an agent of the other or bind the other to any transaction or agreement. Except as specifically provided, the exercise by either party of any rights and remedies under the Services Agreement will be without prejudice to its other remedies under the Services Agreement or otherwise. The failure of Distributor to exercise or enforce any right or provision of the Services Agreement will not constitute a waiver of such right or provision and any waiver of any provision of the Services Agreement will be effective only if in writing and signed by Distributor. ESTEQ is a third party beneficiary of any Services Agreement between a reseller of Services and Client. In the event any provision of the Services Agreement shall be determined to be invalid or unenforceable under law, all other provisions shall continue in full force and effect. These Terms of Use and any Services Agreement are the entire agreement between Client and Distributor relating to the subject matter hereof and supersede all previous communications, representations, and agreements either oral or written between the parties with respect to said subject matter and will not be modified except in writing, signed by Client and Distributor, or by a change to these Terms of Use by ESTEQ as set forth above. Any additional or inconsistent terms on a purchase order shall be null and void. In the event of a conflict between Services Agreement that has been signed by Distributor and Client and these Terms of Use, the terms of such Services Agreement shall govern.