

Managed Hosting Services Terms and Conditions

<https://amicro.com/information/legal/hostingterms>

In addition to the General Terms and Conditions, your use of the Managed Hosting Services is subject to the following additional terms and conditions:

1. ~~ADDITIONAL DEFINED TERMS~~

Some words used in these Managed Hosting Services Terms and Conditions have particular meanings:

"Hosting Services" means Applied Microsystems' provision for your use of the Hosted System described in the Service Description.

"Customer Premises Equipment" means Applied Microsystems' owned equipment or hardware physically located at your premises as described in the Services Description.

"Personally Identifiable Information" or **"PII"** means: (i) a combination of any information that identifies an individual with that individual's sensitive and non-public financial, health or other data or attribute, such as a combination of the individual's name, address, or phone number with the individual's social security number or other government issued number, financial account number, date of birth, address, biometric data, mother's maiden name, or other personally identifiable information; (ii) any "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, §6809(4), and (iii) "protected health information" as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103.

"Service Commencement Date" means the date on which we provide the access codes that enable to you to send and receive information from your Hosted System.

"Support" means: (i) the management of the Hosting Services by a service delivery team that includes a team leader, account manager, and support specialists with training and experience in hosted systems; (ii) availability of live support during normal business hours year round; (iii) any specific support services described in the Service Description; and (iv) use of the Applied Microsystems eWorX® customer portal.

2. DEPLOYMENT

2.1 Deployment Guaranty. We will deploy the server(s) described in the Service Description by the date stated in the Service Description, provided that you promptly provide all information that we reasonably request from you to complete deployment. Servers are deemed deployed as of the time that Applied Microsystems generates an email message to you that includes the information needed to allow you to transfer information to and from the server(s). Your sole and exclusive remedy for our failure to deploy the servers by the guaranteed time shall be a credit equal to one half the amount of the set up fee stated in the Service Description for the affected server(s). You are not entitled to a credit if you request or cause the deployment delay. This deployment guaranty does not apply to any software, other managed services, or hardware devices other than the server(s).

2.2 Delayed Deployment. If you wish to delay the deployment of a Hosted System you may do so, provided that you give us written notice of your election to delay no later than five (5) days following the date you sign the Agreement. The requested delay may not continue for more than two (2) months following your signature on the Agreement. If you request a delay in deployment, we may charge you up to fifty percent (50%) of the monthly recurring fees for the Hosted System during the period of delay. You are not entitled to a credit under Subsection 2.1 above if you request the deployment delay. The initial term of the Agreement will begin when we deploy your Hosted System at your request, or on the second monthly anniversary of the date you sign the Agreement, whichever comes first. Following deployment we will charge you the full monthly recurring fee (plus other usage fees as applicable) for the full term of the Agreement.

3. ENCRYPTION OF PERSONALLY IDENTIFIABLE INFORMATION

The General Terms and Conditions require you to use reasonable security precautions in light of your use of the Services. For the Hosting Services, this includes encrypting any PII transmitted to or from, or stored on, the Applied Microsystems servers or storage devices you use.

4. SERVICE LEVEL GUARANTIES

4.1 Network. We guaranty that our data center network will be available 99% of the time in a given month, excluding scheduled maintenance. The data center network means the portion of the Applied Microsystems network extending from the outbound port on your edge device to the outbound port of the data center border router and includes Applied Microsystems managed switches, routers, and cabling. We will credit your account 3% of the monthly fee for each hour of network downtime, up to 100% of your monthly fee for the affected server(s).

4.2 Infrastructure. We guaranty that our data center HVAC and power systems will be functioning 100% of the time in a given month, excluding scheduled maintenance. Power includes UPSs, PDUs and cabling, but does not include the power supplies on your servers or power supplied to the data center by the local power utility. Infrastructure downtime exists when a particular server is shut down due to power or heat problems. Applied Microsystems will credit your account 3% of the monthly fee for each hour of infrastructure downtime, up to 100% of your monthly fee for the affected server(s).

4.3 Hardware. We guaranty the functioning of the following dedicated, Applied Microsystems-provided hardware: (i) servers, firewalls, and load balancers; (ii) attached storage devices; and (iii) network attached storage devices. Hardware repair or replacement will begin once we identify the cause of the problem. Hardware repair or replacement is guaranteed to be complete within eight hours of problem identification for network attached storage devices and within three hours of problem identification for all other hardware covered by this guaranty. We will credit your account 3% of the monthly fee per additional hour of downtime (after the initial eight (8) hours or three (1) hours for repair or replacement, as applicable), up to 100% of your monthly fee for the affected hardware. This guaranty excludes the time required to rebuild your system, such as the time required to configure a replacement device, rebuild a RAID array, reconfigure devices from their default settings, and reload operating systems and applications.

4.4 Downtime Measurement. Downtime is measured from the time a trouble ticket is opened until network availability is restored, or the affected device is powered back on, as applicable.

4.5 Limitations. You are not entitled to a credit if you are in breach of the Agreement (including your payment obligations to us) at the time of the occurrence of the event giving rise to the credit until you have cured the breach. You are not entitled to a credit if the event giving rise to the credit would not have occurred but for your breach of the Agreement or misuse of your Hosted System. To receive a credit, you must contact your account manager within ten (10) days of the occurrence of the event giving rise to the credit. The Service Level Guaranties are contingent on Applied Microsystems having full logical access to your configuration. No credit will be due if the credit would not have accrued but for your restriction of Applied Microsystems' logical access to your configuration. You are not entitled to a credit if the downtime is caused by a failure arising out of any event or circumstance beyond the reasonable control of Applied Microsystems, including without limitation acts of God, earthquakes, fires, floods, power outages, interruptions in telecommunications or internet or network provider services, acts of utility providers or others that are beyond the control of Applied Microsystems, civil disturbance, strikes, labor disputes, and lawful governmental action.

4.6 Cumulative Dollar Amount. Notwithstanding anything in this Agreement to the contrary, the maximum total credit for failure to meet the Service Level Guaranties under this Agreement for any calendar month shall not exceed 100% of your monthly recurring fee for the affected Hosted System. Credits that would be available but for this limitation will not be carried forward to future months.

5. TERM

The initial term of the Agreement begins on the Service Commencement Date (unless otherwise provided in Section 2.2 (Delayed Deployment)) and continues for the period stated in the Service Description. Upon expiration of the initial term, we may offer you the option of renewing the Agreement for one or more additional terms having a fixed number of months. If you do not renew the Agreement for a fixed term, it will automatically renew for successive extended terms of twelve months each unless and until one of us provides the other with at least thirty (30) days advance written notice of non-renewal. If you add service elements to the Hosted System by a subsequent agreement, we may use the word "coterminous" to describe the initial term of the subsequent agreement for those additional elements. If the term of an agreement is "coterminous," the initial term of that agreement shall expire of the last day of the initial term of the agreement that initially established the Hosted System.

6. FEES

6.1 Your first invoice will include the initial one-time set-up fee and a prorated monthly recurring fee from the Service Commencement Date to the last day of the calendar month. We may require you to pay this initial invoice before beginning the Hosting Services. Following the Service Commencement Date, monthly recurring fees will be billed monthly in advance on or around the first day of each calendar month. Non-recurring fees, such as bandwidth overages, will be billed monthly in arrears.

6.2 Fees are due within five (5) days of invoice date. If you have arranged for payment by credit card or ACH, Applied Microsystems may charge your card or account on or after the invoice date. Applied Microsystems may suspend all Services, and services provided pursuant to any unrelated agreement, if payment of any invoiced amount is overdue, and you do not pay the overdue amount within four (4) Business Days of our written notice to your billing contact. You agree that if your Services are reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee. Applied Microsystems may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days and Applied Microsystems brings a legal action to collect, or engages a collection agency, you must also pay Applied Microsystems' costs of collection, including reasonable attorney fees and court costs. If your check is returned for insufficient funds, we may charge you a fee up to the maximum amount permitted by law. Fees must be paid in U.S. Dollars. Invoices that are not disputed within 180 days of invoice date are conclusively deemed accurate.

7. FEE INCREASES

7.1 Increase in Producer Price Index. If during the initial term or any renewal term there is an increase in the Producer Price Index over the Producer Price Index reported for the month in which you signed your Agreement, we may increase your fees by the same percentage as the increase in the Producer Price Index; provided that we may not increase your fees under this Subsection more often than once per twelve (12) months, and we must give you at least thirty (30) days advance written notice of the increase. The "Producer Price Index" means the Producer Price Index for industry data for: Data processing, hosting and related services-Hosting, ASP, and other IT infrastructure provisioning services, Industry ID 5182105182105, not seasonally adjusted, and first published as "preliminary" data by the United States Bureau of Labor Statistics in its PPI Detailed Report or successor publication. For historical information on the Producer Price Index you may visit the Bureau of Labor Statistics website. (Example: if the Producer Price Index for the month in which you sign the Agreement is 112.0, and then increases in a subsequent month during the term of the Agreement to 114.3, we may increase your fees by up to 2.0%).

7.2 Increase During Twelve-Month Term. If following the expiration of the initial term or any renewal term you do not sign a renewal of your Agreement, but continue to use your Services on a twelve-month basis as described in Section 5 (Term) above, then we may increase your fees at any time by any amount, in our sole discretion, on thirty (30) days advance written notice.

8. TERMINATION FOR CONVENIENCE

You may terminate this Agreement for convenience at any time on thirty (30) days advance written notice.

9. EARLY TERMINATION FEE

If you terminate this Agreement for convenience or we terminate this Agreement for your breach, in addition to other amounts you may owe, you must pay an early termination fee equal to the total monthly recurring fees for the remaining portion of the then-current term. You will not be charged an early termination fee under this Section in the event you terminate this Agreement as part of an agreement to establish a replacement for the Hosted System in a different Applied Microsystems service segment, even if the overall fees for the replacement system are less than those for the Hosted System, provided that the replacement system is the functional equivalent of the Hosted System.

10. RESALE

You may not resell the Hosting Services.

11. MANAGED BACKUP

Applied Microsystems' managed backup services are designed to facilitate restoration of data to the server or device from which the data originated in the event the primary data is lost or corrupted. The quality of your backup depends on how your data is organized. We recommend that you test your managed backup service promptly following the Service Commencement Date, and then periodically, to determine if it is capturing your data properly. If it is not, we will work with you to maximize the accuracy of our managed backup for your data and/or help you identify other data backup solutions that may work better for you. In the event your primary server or device hardware fails and is replaced, we may not be able to restore your backed up data exactly as it was configured on the failed device. If this risk is not acceptable to you, then we will help you identify other data backup solutions that are more reliable in this situation. The "retention" period for your backup refers to the amount of time that we will retain the backup in a useable form for restoration to the server or device from which it originated. If you wish to preserve your backup after the time that this server or device is decommissioned, you must make arrangements with us at least seventy-two (72) hours in advance of the scheduled decommissioning of the server or device. Database duplications or "cloning" for purposes other than a restoration of lost or corrupted data as described in this paragraph are not included as part of your managed backup service, but may be arranged as a Supplementary Service for an hourly fee. We may choose to use either tape or disk to collect your data, in our discretion. Provided that we do not impair the security or reliability of your backup service, you agree that we may from time to time test our backup systems, and may use copies of your data as part of these tests. We will treat duplicate data in accordance with the same security standards applicable to your backup service.

12. DataVault Managed Backup Service

If you purchase the Applied Microsystems' eWorX DataVault service, then the DataVault Addendum at <https://amico.com/information/legal/datavaultsd> as of the date you sign the order or agreement for the eWorX DataVault service is a part of this Agreement.

13. SHAREPOINT

If you purchase the Applied Microsystems' SharePoint service, then the SharePoint Addendum at <https://amico.com/information/legal/sharepointsd> as of the date you sign the order or agreement for the SharePoint service is part of this Agreement.

14. HIPAA.

If Applied Microsystems is your "Business Associate" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, then the HIPAA Business Associate Addendum published at <https://amico.com/information/legal/hipaaba> as of the date that Applied Microsystems becomes your Business Associate is part of the Agreement.

15. MICROSOFT EXCHANGE (DEDICATED)

If you purchase Microsoft Exchange service on a dedicated Hosted System, then the addendum at <https://amico.com/information/legal/exchangesd> as of the date you sign the order or agreement for the Service is part of this Agreement.

16. DATA REPLICATION

If you purchase any Services that involve data replication at a geographically diverse site, then the following applies to your use of that Service: The rate by which the data at the primary site can be transferred to the secondary site will vary depending on the amount and type of data, constraints inherent in your Hosted System, and fluctuations in bandwidth availability. Therefore, at any given time, the secondary site may not be completely up to date. In the event of a failover to the secondary site, the data that has not yet completed the transfer from the primary site will be lost. We may provide you with some guidelines on latency times based on our understanding of your data and system constraints, but these guidelines are not guaranties.

17. COLOCATION

If we host a device that you own in our datacenter, then the Colocation Addendum at <https://amico.com/information/legal/colocationaddendum> as of the date you sign the order or agreement covering the colocation services is part of the Agreement.

18. CUSTOMER PREMISES EQUIPMENT

If we supply Customer Premises Equipment in connection with the Managed Hosting Service provided, then the Customer Premises Equipment Addendum at <https://amico.com/information/legal/cpeaddendum> as of the date your sign the order or agreement covering the Customer Premises Equipment is part of the Agreement.

19. DOMAIN NAME SERVICES

If you register, renew or transfer a domain name through Applied Microsystems, Applied Microsystems will submit the request to its domain name services provider (the "Registrar") on your behalf. Applied Microsystems' sole responsibility is to submit the request to the Registrar. Applied Microsystems is not responsible for any errors, omissions or failures of the Registrar. Your use of domain name services is subject to the applicable legal terms of the Registrar. You are responsible for closing any account with any prior reseller of or registrar for the requested domain name, and you are responsible for responding to any inquiries sent to you by the Registrar.

20. VULNERABILITY TESTING

Vulnerability testing services involve inherent risks, such as data corruption, and impaired performance of your Hosted System. If you ask Applied Microsystems to provide vulnerability testing services, then you agree that Applied Microsystems is not liable to you for any damages arising from the performance of the Services as agreed.

21. UNSUPPORTED CONFIGURATION ELEMENTS OR SERVICES

If you ask us to implement a configuration element (hardware or software) or hosting service in a manner that is not customary at Applied Microsystems, or that is in "end of life" or "end of support" status, we may designate the element or service as "unsupported," "non-standard," "best efforts," "one-off," "EOL," "end of support," or with like term in the Service Description. Applied Microsystems makes no representation or warranty whatsoever regarding any element or service so designated. You agree that Applied Microsystems shall not be liable to you for any loss or damage arising from the provision of the unsupported element or service. The Service Level Guaranties shall not apply to the unsupported element or service, or any other aspect of the Hosting Services that is adversely affected by the unsupported element or service.

22. IP ADDRESSSES

Upon termination of the Agreement you must promptly release any Internet protocol numbers, addresses or address blocks assigned to you in connection with the Services (but not any URL or top level domain or domain name) and you agree that we may take steps to change or remove any such IP addresses.

This Managed Hosting Services Terms and Conditions is the final agreement between you and Applied Microsystems regarding its subject matter and supersedes and replaces any prior agreement, understanding or communication, written or oral.

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