



POSitiveCommerce E-Commerce Service Agreement



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POSitiveCommerce E-Commerce Service Agreement

POSitive Software Company. ("POSitive") will provide the POSitiveCommerce E-Commerce service ("Service") to Subscriber ("Subscriber") on the terms and conditions set forth below.

1. SERVICE. The Service includes extracting selected pieces of information directly from POSitive For Windows and POSitive Retail Manager POS software and posting the information in a manner which allows Internet access to the information, to Subscriber and Subscriber's Customers (hereinafter "Customers"). E-Commerce related technical support is included in the monthly fee. Customer should have a technical support agreement in place for POSitive For Windows or POSitive Retail Manger for non E-Commerce related support issues.

2. PAYMENT TERMS. Subscriber agrees to pay all fees, which include but not limited to, monthly subscription fees, taxes, finance charges, collection charges, etc. If payment is not received by due date, late fees and/or collection charges may be assessed and Service may be disconnected. Subscriber must pay all past due invoices before the Service will be reconnected. Fees are subject to review every six months and may be adjusted as necessary.

3. PAYMENT TYPE. Payment is due in US dollars or as otherwise agreed upon in writing by both parties.

4. PAYMENT METHOD. Subscriber agrees to pay POSitive in accordance with the payment methods specified in this agreement.

5. LATE FEES. A late charge of 1.5%, per month, of any balance in arrears will be added and deemed collectable if payment is not rendered by the due date.

6. RETURN CHECKS. A \$25.00 service charge will be assessed on all returned checks, regardless of the reason the check was returned.

7. PRICE CHANGE. Subscriber acknowledges and understands that POSitive, at its sole discretion, can change the price at any time. Notification of a price change will be posted on POSitive's website at www.gopositive.com at least 30 days prior to any price change taking effect. Subscriber will be notified of price change in written form, either by contact e-mail address or by postal letter sent to Subscriber's billing address.

8. RULES & REGULATIONS. The Service may impose reasonable rules and regulations regarding the use of the Service from time to time. The Service shall impose such rules and regulations on its subscribers to the extent necessary to ensure compliance. This information will be posted on your POSitiveCommerce Web Administration site.

9. SOFTWARE AND SERVICE OWNERSHIP/ COPYRIGHT. Subscriber acknowledges and agrees that the Service and all computer programs and documentation used to create the Service, shall be the sole and exclusive property of POSitive, including, without being limited to, all copyrights together with all exclusive rights granted to an author under the copyright laws of the United States, foreign countries, and international conventions, as well as the right to grant these rights in any part, to third parties.

10. PROPERTY RIGHTS. POSitive owns all right, title and interest in POSitive's trade names, service marks, inventions, copyrights, trade secrets, patents, and know-how relating to the design, function, or operation of Service. This Agreement does not constitute a license to the Subscriber to use POSitive's trade name or service marks.

11. LIMITED WARRANTY. THE SERVICE IS PROVIDED BY POSITIVE "AS IS" WITHOUT WARRANTY OF ANY KIND. POSITIVE, ITS EMPLOYEES, AGENTS, SUPPLIERS, VENDORS, PUBLISHERS, DISTRIBUTORS, AFFILIATES, AND/OR SUBCONTRACTORS MAKE NO WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, REGARDING THE QUALITY OF THE DATA AND/ OR INFORMATION AVAILABLE ON ITS SYSTEMS, OR RESIDING ON OR PASSING THROUGH ITS INTERCONNECTING NETWORKS, OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES FOR NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED AND DISCLAIMED.

12. LIMITATION OF LIABILITY. In no event shall POSitive be liable to Subscriber, Customers, Subscriber's affiliates, or any other entity for any special, consequential, or other damages, however caused, whether for breach of contract, negligence or otherwise, even if POSitive has been advised of the possibility of such damage. Neither POSitive nor any of POSitive's respective employees, agents, suppliers, vendors, publishers, distributors, affiliates, or subcontractors will be liable to Subscriber, Customers, or any third party for:

12a. Any direct, indirect, incidental, special, punitive or consequential losses or damages, including loss of profits, loss of business opportunities, loss of earnings, lost data, lost savings, and person injuries resulting directly or indirectly out of, or otherwise arising in connection with, the use of the Service; or

12b. Any losses, claims, damages, expenses, liabilities, costs (including legal fees) resulting directly or indirectly out of, or otherwise arising in connection with any allegation, claim, suit or other proceeding based upon a contention that the Service by Subscriber on a third party infringes the copyright, patent, trademark, trade secret, confidentiality, privacy, or other intellectual property right or contractual rights of any third party; or

12c. Data corruption or a misinterpretation of data due to the inaccuracy of the accounting driver set in the Data Agent section of the Service; or

12d. Inaccuracy of data stored or transmitted via its system or via the Internet; or

12e. Interruption or termination of the Service; or

12f. Inadvertent disclosure of, or corruption or erasure of, data transmitted, received or stored on its system; or

12g. Any claims relating to any action taken by POSitive as part of its investigation of a suspected violation of this Agreement or as a result of its conclusion that a violation of this Agreement has occurred.

13. REMEDIES. POSitive's liability to Subscriber, if any, is limited to the amount paid to and received by POSitive for services not accepted. Subscriber's sole and exclusive remedies under this Agreement are as expressly set out in this Agreement.

14. INDEMNIFICATION. Subscriber will take all necessary steps to preclude POSitive, its respective affiliates, subcontractor, employees or agents from being a party to any lawsuit or claim regarding the Service. Subscriber agrees to defend, indemnify and hold POSitive and all affiliates harmless from any and all claims, losses and damages, including attorney's fees, brought by any of Subscriber's Customers.

15. PROHIBIT USES OF SERVICES. Subscriber shall not use the Service to, directly or indirectly:

15a. Invade another person's privacy; or

15b. Access POSitive servers in an unlawful manner; or

15c. Copy, destroy or harm Service in an manner; or

15d. Service, alter, modify or tamper with the Service or permit any other person to do the same that is not authorized in writing by The Service; or

15e. Copy, distribute or sublicense any software provided by POSitive unless authorized in writing by POSitive; or

15f. Transmit incorrect, invalid or excessive data; or

15g. Transmit data more than a reasonable number of times per 24 hour period; or

15h. Use an excessive amount of memory or disk space, CPU time, or do anything that otherwise affect the performance of The Service's server; or

15i. Restrict, inhibit or otherwise interfere with the ability of others to use the Service; or

15j. Resell the Service or charge others to use the Service; or

15k. Use the Service in a way that is contrary to any other POSitive policy that may be posted by POSitive from time to time.

16. COMPLIANCE WITH LAWS. Subscriber agrees to use the Service only for lawful purposes, in compliance with all applicable local, state, and federal laws. POSitive reserves the right to investigate any perceived unlawful activity. POSitive will fully cooperate with any authorized law enforcement agency in investigating suspected unlawful actions.

17. TERMINATION.

17a. Subscriber Cancellation. Subscriber has the right to cancel the Service at any time for any reason. Subscriber must notify POSitive in written form at least 30 days before Service is to be terminated in order for POSitive to cancel the Service properly.

17b. POSitive Cancellation. POSitive has the right to terminate this Agreement at any time for any reason. Subscriber will be notified of cancellation in written form, either by contact e-mail address or by postal letter sent to Subscriber's billing address.

18. DISPUTES.

18a. Billing Dispute. Subscriber must notify POSitive in written form within 60 days of the invoice date of the disputed occurrence.

18b. Other Disputes. Subscriber may not bring any claim, suit or proceeding more than 180 days after the date the cause of action arose.

19. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Washington. This Agreement shall be litigated, if at all, in and before a Court located in the County of Benton, State of Washington, U.S.A. to the exclusion of the Courts of any other state or country unless both parties agree otherwise.

20. ATTORNEY FEES. If any action is necessary to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs of suit.

21. PARTIAL INVALIDITY. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to affect the original intentions of the parties, and the remainder of this Agreement shall remain in full force and effect.

22. AMENDMENT. POSitive has the right, in its sole discretion, to add, modify or delete portions of this Agreement at any time. Subscriber will be notified of any changes in written form, by postal letter sent to Subscriber's billing address. Subscriber's continued use of Service following the notice shall be deemed to be the Subscriber's acceptance. If Subscriber does not accept these terms, Subscriber must immediately stop Service and notify POSitive in writing regarding termination of the Service.

23. CONFIDENTIALITY. Subscriber acknowledges that by reason of its relationship with POSitive, it may have access to certain information and materials relating to POSitive's business, services, subscribers, software technologies, and marketing strategies. This information is confidential and of substantial value to POSitive, which would be impaired if such information were disclosed to a third party. Subscriber agrees not to disclose any such information. Furthermore, POSitive respects the confidentiality of any data that subscriber uploads to the server or raw data that may be provided to POSitive for testing purposes. That data will never be shared with outside parties.

24. MISCELLANEOUS SUBSCRIBER RESPONSIBILITIES. Subscriber's responsibilities include, but are not limited to, the following:

25a. Subscriber must transmit data to Account Wizard server at least once a month.

25b. Subscriber must contact POSitive in writing within 30 days of any change to name, address, phone, fax, e-mail address and billing information.

25. SERVICE ADJUSTMENTS. From time to time, POSitive will shut down the Service for upgrades or repairs. The down time will be as quick as possible and, if feasible, will be done on off peak hours. Subscriber acknowledges and accepts this procedure.

26. DATA INTEGRITY. POSitive has no obligation to monitor the integrity of the Subscriber's data. However, POSitive may, from time to time, perform tests on the Subscriber's data to ensure accuracy. Subscriber acknowledges and accepts this procedure.

27. CONTACT ADDRESS. For any inquiries or notices regarding this Agreement, Subscriber should contact POSitive via e-mail at sales@gopositive.com or in writing at:

POSitive Software Company
2290 Robertson Drive
Richland, WA 99354.

Any changes will be posted on our website at www.gopositive.com.

28. CAPTIONS. Captions are for descriptive purposes only and are not meant to be all-inclusive.

29. FEE SCHEDULE.

POSitiveCommerce Basic Set-up Fee \$299

This is our basic package that will allow us to get a e-commerce site up and running quickly.

- Domain Registration
- Shared SSL Certificate
- Web Hosting
- E-mail Account
- Joomla-based Web Site
- Customized VirtueMart Shopping Cart
- Terms, Privacy and Shipping Static Pages (required)
- Up to 2 additional Static Pages

*This is our basic set-up fee even if you already have a registered domain and web site. All fees are non-refundable.

POSitiveCommerce Monthly Hosting Fee \$79

This is the base monthly fee for the e-commerce service and it includes up to 5GB of downloaded data (traffic) per month. The hosting fee is billed every 6 months and is subject to adjustment based on a monthly average of traffic during the previous 6 months. Additional monthly traffic will be billed at \$10 per gigabyte. For example, if a site averages 7GB of traffic over a 6 month period, the monthly hosting fee would be increased to \$99 for the next 6 month billing period.

POSitiveCommerce Pro-rated Hosting Fee \$2.75/day

This fee is charged if a e-commerce site goes live after the first day of the month, and is multiplied by the number of days left in the month.

POSitiveCommerce Optional Services

Any service not included in Basic Set-up. May be priced individually or by quote.

30. HOSTING DETAILS.

Managed Site Changes	-	4 Per Month
Subdomains	-	Unlimited
MailBoxes	-	10
Per MailBox Quota	-	50MB
Total Mailbox Quota	-	1GB
Mail Aliases	-	Unlimited
Mail Groups/Lists	-	Unlimited
Mail Autoreponders	-	Unlimited
Mail Redirects	-	Unlimited
Shared SSL Links	-	2
Disk Space	-	1GB
Maximum Traffic	-	5GB
MySQL # of DBs	-	2
MSSQL # of DBs	-	2
SQL Size	-	Unlimited

Features

- Frontpage Extensions
- Shared IP/Host Header Hosting
- ASP, ASP.NET 2.x, PHP, CGI, Perl, Python Scripting Support
- Customizable Error Documents
- Raw Log Access
- Detailed Traffic Statistics (24 months)
- Webmail

Domain Hosting Only Pricing

Domain Hosting 1st Site	\$30/month
Domain Hosting Additional	\$20/month

Extras

Domain Aliases	- \$5/mo	- Includes DNS Registration
Mailboxes	- \$10/mo	- 5 Additional Mailboxes
Additional Traffic	- \$10/mo	- 1GB Additional Transfer
Dedicated IP	- \$10/mo	- Includes Anonymous FTP Site
Dedicated SSL	- \$150/yr	- Requires Dedicated IP
Additional SQL DBs	- \$10/mo	
Additional Shared SSL	- \$5/mo	

ENTIRE UNDERSTANDING. The foregoing statements constitute the complete and exclusive Agreement between POSitive and the Subscriber and supersede any prior Agreement in any form, written or oral, and any other communications relating to the subject matter of this Agreement.

By signing this Agreement, both parties agree to be bound by its terms and conditions.

<p>_____</p> <p>Company Name</p> <p>_____</p> <p>Authorized Subscriber Name (Please Print)</p> <p>_____</p> <p>Authorized Subscriber Signature Date</p> <p>_____</p> <p>Contact Person</p> <p>_____</p> <p>Billing Address</p> <p>_____</p> <p>City, State, Zip</p> <p>_____</p> <p>Telephone</p> <p>_____</p> <p>E-mail</p> <p>_____</p> <p>Web Domain</p> <p>_____</p> <p>POSitive Software Company Date Representative</p>	<p>Billing Information</p> <p>_____</p> <p>Credit Card Number</p> <p>_____</p> <p>Expiration Date</p> <p>_____</p> <p>Setup Fee Setup Date</p> <p>_____</p> <p>Options</p> <p>_____</p> <p>Options</p> <p>_____</p> <p>Prorated Fee x Days = Total</p> <p>_____</p> <p>Monthly Fee x Months = Total</p> <p>_____</p> <p>Billing Cycle</p> <p>I authorize POSitive to bill my credit card for the set-up fees and the monthly service fees incurred on the site.</p> <p>_____</p> <p>Authorized Signature</p> <p>Billing is made on the last day of the month for the following month's service. Initial setup requires payment of the Setup Fee plus the current month's pro-rated fee.</p> <p>Credit card billing is made by POSitive Software Company. Please be aware of this when reviewing your monthly credit card statement.</p>
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