



## SelectSurvey.NET Hosted Service Agreement

This SelectSurvey.NET Hosted Service Agreement ("Agreement") is by and between ClassApps.com, a dba of Atomic Design, LLC., a/an Missouri LLC ("ClassApps"), and you and your heirs, assigns, agents and contractors (collectively, "You") and is effective as of the date of electronic execution. This Agreement sets forth the terms and conditions of Your use of ClassApps's SelectSurvey.NET Hosted services (collectively, the "SelectSurvey.NET Hosted Services") and represents the entire agreement between You and ClassApps. By using ClassApps's SelectSurvey.NET Hosted Services, You acknowledge and agree You have read, understand, acknowledge and agree to be bound by all the terms and conditions of this Agreement, along with any new, different or additional terms, conditions or policies, including, but not limited to, the Universal Terms of Service, that ClassApps may establish from time to time. Such Agreements may be found here.

In addition to transactions entered into by You on Your behalf, You also agree to be bound by the terms of this Agreement for transactions entered into on Your behalf by anyone acting as Your agent, and transactions entered into by anyone who uses the account You have established with ClassApps whether or not the transactions were on Your behalf.

### **1. Description of Service**

ClassApps currently provides SelectSurvey.NET Hosted Services to its customers for a monthly fee. ClassApps will provide You an account on ClassApps's SelectSurvey.NET Hosted service, provided, however, You abide by the terms and conditions set forth herein and in each of ClassApps's policies and procedures.

### **License of Your Server Content**

The following restrictions apply to the hosted survey content in connection with ClassApps's performance or enforcement of this Agreement.

- A. Licensee may provide create, manage, maintain, and deploy rights and access only to Licensees' employees and contractors.
- B. Licensee may utilize the built in admin tools utility for branding the software logos on the admin area and default page of the application interface.





C. Licensee may NOT provide create, manage, maintain, and deploy access to anyone other than their employees and full time contractors to the SelectSurvey software and must take all reasonable measures to prevent this occurrence.

D. Licensee may NOT resell the service of the hosted survey account.

E. Licensee may NOT transfer license to anyone without prior written permission of ClassApps.com.

### **Availability of Services**

Subject to the terms and conditions of this Agreement, ClassApps shall use commercially reasonable efforts to provide the SelectSurvey.NET Hosted Services on a twenty-four (24) hours a day, seven (7) days a week basis throughout the term of this Agreement. You agree that from time to time, the SelectSurvey.NET Hosted Services may be inaccessible or inoperable for any reason, including, without limitation:

1. equipment malfunctions;
2. periodic maintenance procedures or repairs that ClassApps may undertake from time-to-time; or
3. causes beyond the control of ClassApps or that are not reasonably foreseeable by ClassApps, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures.

You agree the availability of the SelectSurvey.NET Hosted Services may be inaccessible during periods of time for which You have scheduled upgrades or downgrades to Your SelectSurvey.NET Hosted. You agree ClassApps has no control of availability of the SelectSurvey.NET Hosted Services on a continuous or uninterrupted basis.

You further agree that as a normal course of its business, it may be necessary for ClassApps to migrate its servers. As a result, even though You may have a dedicated IP, You may be assigned a different IP number. ClassApps does not warrant that You will be able to consistently maintain Your given IP numbers.

### **FTP Backup**

ClassApps may offer additional features and add on services such as a FTP Backup option. Not all features and services may be available in every area. You acknowledge and agree that purchasing such additional features and add on services may require additional down time to install and maintain. You further acknowledge and agree that in utilizing the FTP Backup option, You shall be subject to a maximum disk usage and bandwidth usage as identified by ClassApps. Subject to the





terms and conditions of this Agreement, ClassApps shall use commercially reasonable efforts to provide FTP Backup services on a twenty-four (24) hours per day, seven (7) days per week basis throughout the term of this Agreement. You acknowledge and agree that from time to time the FTP Backup services may be inaccessible or inoperable for any reason, including without limitation:

1. equipment malfunctions;
2. periodic maintenance procedures or repairs that ClassApps may undertake from time-to-time; or
3. causes beyond the control of ClassApps or that are not reasonably foreseeable by ClassApps, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures.

### **Server Content**

You shall be solely responsible for management of Your survey data content and any and all surveys, responses, uploaded images, templates, files, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through Your hosted service, including, without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, meta tags, domain names, software and text. Your server content shall also include any registered domain names provided by You or registered on behalf of You in connection with the SelectSurvey.NET Hosted Services.

### **2. Your Obligations**

You acknowledge and agree ClassApps shall have the right to seek justification in connection with Your use of the SelectSurvey.NET Hosted Services, and You shall be obligated to provide any and all information reasonably sought by ClassApps pursuant to such justification.

You represent and warrant to ClassApps that Your content does not and shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that actually or potentially violate any applicable law or regulation or infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person and that You own Your server content and all proprietary or intellectual property rights therein, or have express written authorization from the owner to copy, use and display the content on and within Your server account. You also represent and warrant the server content being hosted by ClassApps shall not be used in connection with any illegal activity.

You are responsible for ensuring there is no excessive overloading of ClassApps's DNS system or servers. In the event You exceed Your allotted bandwidth and thereby overload ClassApps's DNS or servers, You shall be assessed any and all fees, costs and penalties associated with such





overloading. You may not use ClassApps's servers and Your Server Account as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, denial of service, or other abusive activities. You acknowledge and agree ClassApps has the right to remove Your server content temporarily or permanently from its SelectSurvey.NET Hosteds if ClassApps is the recipient of activities that threaten the stability of its network.

You agree not to engage in unacceptable use of any of the SelectSurvey.NET Hosted Services, which includes, without limitation, use of the SelectSurvey.NET Hosted Services to:

1. disseminate or transmit unsolicited messages, chain letters, unsolicited commercial email or unreasonably large volumes of email on a daily basis, provided, ClassApps, in its sole discretion, may permit You, if You have a legitimate purpose and after request, to send more email than ClassApps's standard SMTP relay limit;
2. disseminate or transmit any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious;
3. disseminate or transmit files, graphics, software or other material, data or work that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person;
4. create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication;
5. export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses and/or exemptions;
6. interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which You do not have authorization to access or at a level exceeding Your authorization;
7. disseminate or transmit any virus, trojan horse or other malicious, harmful or disabling data, work, code or program;
8. engage in any other activity deemed by ClassApps to be in conflict with the spirit or intent of this Agreement or any ClassApps policy; or
9. use Your server as an "open relay" or similar purposes.

## **Storage and Security**





At all times, You shall bear full risk of loss and damage to all of Your SelectSurvey.NET hosted account data content. You are entirely responsible for maintaining the confidentiality of Your password and account information. You acknowledge and agree You are solely responsible for all acts, omissions and use under and charges incurred with Your account or password or in connection with the server or any of Your server content displayed, linked, transmitted through or stored on the server. You shall be solely responsible for undertaking measures to:

1. prevent any loss or damage to Your server content;
2. maintain independent archival and backup copies of Your server content;
3. ensure the security, confidentiality and integrity of Your server content transmitted through or stored on ClassApps servers; and
4. ensure the confidentiality of Your password.

ClassApps's servers and SelectSurvey.NET Hosted Services are not an archive and ClassApps shall have no liability to You or any other person for loss, damage or destruction of any of Your content. The SelectSurvey.NET Hosted Services are not intended to provide a PCI (Payment Card Industry) compliant environment and therefore should not be considered as one. ClassApps shall have no liability to You or any other person for Your use of the SelectSurvey.NET Hosted Services in violation of these terms. You acknowledge and agree ClassApps has the right to carry out a forensic examination in the event of a compromise to Your server or account.

In the event You terminate this Agreement or Your use of the SelectSurvey.NET Hosted Services, moving Your server content off of the ClassApps SelectSurvey.NET Hosted service is Your responsibility. ClassApps will not transfer or FTP Your server content to another provider. In the event Your use of the SelectSurvey.NET Hosted Services is terminated, ClassApps will not transfer or manage Your SelectSurvey.NET Hosted Services or Your server content.

### **3. Assisted Services**

In the event You elect to purchase ClassApps's Consulting Services, the following terms and conditions shall apply to Your use of and ClassApps's obligations in connection with providing the Hourly Consulting Services (collectively, the " Consulting Services").

Subject to the terms and conditions of this Agreement and each of ClassApps's policies and procedures, ClassApps shall use commercially reasonable efforts to attempt to provide the Consulting Services on a twenty-four (24) hours per day, seven (7) days per week basis for the duration of the Consulting Services purchased. You acknowledge and agree that from time-to-time the Consulting Services may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs that





ClassApps may undertake from time to time; or (iii) causes beyond the reasonable control of ClassApps or that are reasonably unforeseeable by ClassApps, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures.

You acknowledge and agree ClassApps has no control over the availability of the Consulting Services on a continuous or uninterrupted basis.

### ClassApps's Rights

ClassApps explicitly reserves the right and sole discretion to:

1. modify its pricing, if desired by ClassApps ;
2. establish limits and guidelines concerning the use of the Consulting Services;
3. terminate Your use of the Consulting Services for use of the Consulting Services to unnecessarily or illegally harass ClassApps or third parties, non-payment of fees for the Consulting Services, activities designed to defame, embarrass, harm, abuse, threaten, slander or harass third parties, activities prohibited by the laws of the United States and/or foreign territories in which You conduct business, activities designed to encourage unlawful behavior by others, such as hate crimes, terrorism and child pornography, activities that are tortious, vulgar, obscene, invasive of the privacy of a third party, racially, ethnically, or otherwise objectionable in the sole opinion of ClassApps, activities designed to impersonate the identity of a third party, activities designed to harm minors in any way, and other activities whether lawful or unlawful that ClassApps determines, in its sole discretion, to be harmful to its other customers, operations, or reputation;
4. terminate Your use of the AS Services if Your use of the Consulting Services results in, or is the subject of, legal action or threatened or proposed legal action, against ClassApps or any of its affiliates or partners, without consideration for whether such legal action or threatened or proposed legal action is eventually determined to be with or without merit; and
5. terminate Your use of the Consulting Services at any time and for any reason if deemed reasonably necessary by ClassApps.

ClassApps has no obligation to monitor Your use of the Consulting Services, but reserves the right in its sole discretion to do so.

### **Charges for Custom Consulting Services**

When ClassApps determines requested assistance falls out of the scope of the basic Consulting plan, charges shall apply for Your use in the form of Custom Support Services (hereinafter referred





to as "CSS"), and ClassApps shall charge You for Your use of the CSS on a thirty (30) minute incremental basis. Furthermore, when ClassApps determines a fee will be assessed for Your use of the CSS, ClassApps reserves the right to charge any or all of the fees prior to the commencement of any work being performed.

