

# KB DirectConnect™

## KERKERING BARBERIO & CO., P.A. CLIENT HOSTING AGREEMENT



Thank you for doing business with Kerkering Barberio & Co., P.A. We are committed to providing you with the highest quality services. If, at any time, you have questions or problems please let us know. Our goal is to provide you premium service and support. By this Hosting Agreement (“Agreement”), Kerkering Barberio & Co., P.A. (“KB.”) and the customer identified below (“Client”) agree as follows:

### 1. Hosting Services.

1.1. KB shall provide hosting services consisting of providing space on its computer servers that are integrated into the Internet and World Wide Web, for use in hosting client financial and accounting data, as well as sending and receiving information.

KB shall maintain exclusive control over and ownership in any and all IP numbers and addresses that may be assigned to Client for these services and reserves, in its sole and absolute discretion, the right to change or remove any or all such IP numbers or addresses. Client recognizes that the Internet is an international computer network of inter-operable packet switched data networks that are beyond KB’s control. Client’s use of the Internet is solely at its own risk and subject to local, state, national and international laws and regulations.

1.2 Client shall not use KB servers for any purpose other than uses directly related to the operation of the accounting software that KB is hosting. The client shall not allow access to their data and our servers by any other party without advising KB of that party’s intent (external auditors, remote owners, etc.) The client shall not use emails from the KB servers, other than those originating from the accounting software. The client shall not load or execute any software from the KB servers other than those directly related their accounting software. The client shall not engage in any other activity, whether lawful or unlawful, that KB deems, in its sole and absolute discretion, to be harmful, unacceptable or undesirable to its subscribers, clients, operations or reputation.

1.3. Client may only use the hosting services for lawful business purposes. Client shall have sole responsibility and control over all content incorporated into the hosting server, as well as any information or material passed to/from Client via the hosting server.

1.4. During the period that KB provides hosting services, the client will purchase and register up to date software licenses for the accounting software being hosted. In addition, if the software requires additional modules to be licensed (including, but not limited to Tax Tables), those will be properly licensed and registered on an annual basis. Each client must properly license the use of the accounting software, as if it was running on his own computer system. Each client must provide proof to KB that these licenses were purchased and are up to date.

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1.5. Client shall designate a contact person ("Contact") who will be responsible for reporting all problems and errors associated with the hosting services to KB. The Contact must be available to work with KB over the telephone and/or onsite to help KB troubleshoot and resolve problems and determine the appropriate course of action. The Contact will be responsible for any add, change, and deletes of the users in the hosted accounting software and is also responsible for any end user training of Client employees on the use of the hosted site. The Contact will be responsible to provide KB with up to date telephone numbers and email addresses.

1.6. Any additional services, including add/change/deletes of the client's users to the hosting service that are not performed by the Client's Contact is a chargeable event and is not covered in the monthly hosting fees. Any training of users or a Contact on the use of the hosted product is a chargeable event and will not be covered under the monthly hosting fees. Any setup of user workstation environments to allow the workstation to connect and work with the hosted server is a chargeable event and will not be covered in the monthly hosting fees.

1.7. KB will work with the Contact to set up printing at the Client's location. The Client should be aware that certain printers do not configure properly in the hosted environment. KB will provide 30 minutes at no charge to work with the Contact to configure an existing Client printer to work with KB's hosting servers. If after 30 minutes, it is determined that the Client printer will not print properly under in the hosted environment, additional time spent by KB to try to properly configure the printer will be a chargeable event. KB can provide to the Client a listing of printers that are known to operate well within the hosted environment and which the Client may purchase.

1.8. KB agrees to maintain the server for security, necessary hot fix patches and general maintenance, as well as updates to the accounting software, and including the backup of client data on a regularly scheduled basis. If KB does not perform these tasks, client can request for a 30 day cure period to correct the issue. If KB fails to reasonably correct the issue, Client has the ability to terminate the agreement.

**2. Rate.**

Client shall incur a monthly fee of THIRTY AND 00/100 DOLLARS (\$30.00) for the hosting services. Such fee shall be incorporated into a monthly billing for additional services provided by KB, including but not limited to financial statement preparation, tax return preparation, tax and business consulting and other professional services. Such additional services will be separately contracted and agreed to between Client and KB. If invoices are delinquent for over thirty (30) days, Kerkering Barberio & Co., P.A. reserves the right to discontinue Client's use of the hosting services.

**3. Term.**

The Agreement shall be effective as of the date hosted services are first provided by KB to Client and from year to year thereafter unless terminated by either party for any reason upon at least thirty (30) days written notice.

**4. Service Limitations.**

KB is not responsible or liable for down time caused by acts of God, accident, disaster, including water, wind, fire and lightning, transportation, vandalism, burglary, strike, government action or any cause beyond the reasonable control of KB. KB reserves the right to not have the services available for up to 5% of business hours per year. Business hours are defined as 8 am to 5 pm each business week days, and does not include holidays.

**5. Limitation of Liability.**

For each service provided, KB warrants that it will perform in a competent manner. Under no circumstances shall KB be liable for any act or omission arising out this Agreement that is not brought to its attention by Client in writing within thirty (30) days of occurrence. Client may file no claim for losses or other relief arising out of this Agreement more than one (1) year following the event that gave rise to the alleged liability. KB's total liability in any case is limited, in the aggregate, to the amount of any fees actually paid by Client during the six (6) month period immediately preceding the event that gave rise to the liability. KB shall not be liable for any indirect, incidental, consequential, special, delay, punitive, economic or property damages whatsoever (including any damages for loss of business profits, business interruption, loss of information or other pecuniary loss) arising out of this service or this Agreement, even if KB was advised of the possibility of such damage.

**6. Ownership.**

6.1. As between KB and Client, any content provided to KB by Client or a third party in connection with this Agreement shall at all times remain the property of Client or its licensor. KB shall have no rights in such Content, other than the limited right to use such Content for the purposes expressly set forth in this Agreement.

6.2. Notwithstanding the foregoing, Client has no copyright, trade secret, patent or other intellectual property or proprietary interest in the following items (collectively, "Kerkering Barberio & Co., P.A. Works"): (i) the hosting services or in any software, data, designs, code, programming, documentation, files, information or other items relating to same created or used by KB; or (ii) any standard code, program or routine owned by KB or licensed from a third party. KB shall retain all ownership or license rights to Kerkering Barberio & Co., P.A. Works exclusively. Client shall not alter, obscure or revise any proprietary, restrictive, trademark or copyright notice included with Kerkering Barberio & Co., P.A. Works.

**7. Disclaimer.**

KB makes no warranties or promises about the performance or other characteristics of the information, services or products provided in connection with this Agreement. Although KB offers the service to encrypt data to its secure servers via

industry standard methods, KB is not responsible or liable for any failure of encryption or security measures employed. Although KB provides regular backups of Client's information, Client is responsible for keeping a separate backup copy of any Content, data, files, e-mail and other information stored by KB as a part of the hosting services and having it available for use in the event the server or any associated data is ever corrupted or lost.

**ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF QUALITY, DURABILITY, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY, CONTINUOUS USE, DESIGN, COMPLIANCE WITH APPLICABLE LAW, PERFORMANCE OR ERROR-FREE OPERATION (INCLUDING ANY CREATED BY THE INTERNATIONAL SALE OF GOODS CONVENTION) ARE DISCLAIMED IN THEIR ENTIRETY.**

**8. Third Party Products.**

Client recognizes that the Server may be utilized to access data, information, systems, and/or services obtained or provided by third parties. KB makes no warranties or representations of any kind with regard to the correctness, accuracy, completeness, merchantability or fitness of any data, information, system and/or service provided by such third parties and under no circumstances shall KB have any responsibility or liability to Client with respect to any product or service provided by a third party. No license, either expressed or implied, is provided to Client by this Agreement to access or use such third party data, information, system and/or service. Use of such items may be governed by separate license agreements that bind Client.

**9. Indemnification.**

9.1. Client shall indemnify, defend, and hold harmless KB and its officers, employees, directors and agents, in their individual capacities or otherwise, from and against any and all losses asserted by a third party resulting from, arising out of, or incurred in connection with Client's: (i) gross negligence or willful misconduct resulting in personal injury or property damage; (ii) misuse of the hosting services; (iii) failure to comply with applicable law; (iv) failure to comply with the terms of this Agreement; (v) failure to comply with the terms of any third party agreement to which it is a party; or (vi) any claim of libel, violation of privacy rights, unfair competition or infringement of an intellectual property rights not caused by KB.

9.2. KB shall indemnify, defend, and hold harmless Client and its officers, employees, directors, shareholders and agents, in their individual capacities or otherwise, from and against any and all losses asserted by a third party resulting from, arising out of, or incurred in connection with KB's: (i) gross negligence or willful misconduct resulting in personal injury or property damage; (ii) failure to comply with applicable law; (iii) failure to comply with the terms of any third party agreement to which it is a party; or (iv) the hosting services infringing a registered U.S. patent or copyright.

9.3. The obligation to provide indemnification under this section is contingent upon: (i) the indemnified party promptly notifying the indemnifying party in writing of any claim; (ii) the indemnifying party having sole control over the defense and

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settlement of the claim; (iii) the indemnified party reasonably cooperating during defense and settlement efforts; and (iv) the claim not arising, in whole or in part, out of the indemnified party's breach of this Agreement.

**10. General.**

10.1. Client may not sell, subcontract, subrogate, assign or transfer any rights or obligations under this Agreement without prior written consent of KB. Any dissolution, merger, consolidation, reorganization or transfer of a majority of the assets or stock of Client shall constitute an attempted assignment of this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.

10.2. This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida. Any dispute, claim or controversy arising out of or relating to the subject matter of this Agreement shall be settled through binding arbitration administered by the American Arbitration Association in accordance with its then current Commercial Arbitration Rules and, if applicable and available, any specialized rules relating to the administration of technology disputes. The arbitrator shall have jurisdiction to award the prevailing party, if any, its reasonable attorney's fees, costs and expenses. All arbitration proceedings shall be held in the city of Sarasota, Sarasota County, Florida, U.S.A. Judgment on any arbitration award may be entered in any court having jurisdiction over the subject matter or the parties.

10.3. This Agreement may not be modified or amended without the express written consent of both Client and KB.

10.4. Each party shall treat all information received from the other party and designated as confidential ("Confidential Information") as a trade secret and strictly confidential.

10.5. Neither party shall be deemed to have waived any of its rights under this Agreement without specifically agreeing to do so in writing. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.

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**CLIENT BUSINESS NAME**

**KERKERING, BARBERIO & CO., P.A.**

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By:

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By:

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Date

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Date