

**PLEASE READ THE FOLLOWING TERMS OF SERVICE CAREFULLY BEFORE USING THE SITE OR SIGNING UP FOR ANY SERVICE THAT HOSTPAPA OFFERS.**

## **1. INTRODUCTION**

HostPapa, Inc., its affiliates and their successors and assigns (collectively referred to as "HostPapa") makes available the web hosting and related services described in HostPapa's published service descriptions subject to these Terms of Service (the "TOS").

For the purposes of the TOS, the word "you" means the individual requesting one or more services provided by HostPapa, and, if applicable, includes any other legal entity on behalf of which an individual makes such a request. Additionally, you agree not to make such a request on behalf of any other legal entity unless you have the authority to bind that legal entity to the TOS.

## **2. ACCEPTANCE OF TERMS**

### **2.1**

Capacity. You represent and warrant to HostPapa that you have the capacity to enter into a legal agreement in the province, state, territory or country in which you reside. If you do not have the capacity to enter into a legal agreement in the province, state, territory or country in which you reside, do not request services from HostPapa unless your parent or guardian enters into the TOS on your behalf.

### **2.2**

PLEASE READ THE TOS CAREFULLY. BY CLICKING ON THE "I AGREE" BUTTON ON THE ORDER FORM FOR ANY SERVICE PROVIDED BY HOSTPAPA, YOU ARE AGREEING TO BE BOUND BY THE TOS AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THE TOS. YOUR USE OF THE SERVICES FURTHER CONFIRMS YOUR ACCEPTANCE OF THESE TOS.

### **2.3**

You represent and warrant to HostPapa that your use of any service that it provides will not violate any applicable law or regulation in the province, state, territory or country in which you reside. If you are unable or unwilling to do so, do not request services from HostPapa.

## **3. YOU**

### **3.1**

Services. The services that you request from HostPapa by means of the online order form on the Site or otherwise in writing and which HostPapa agrees to provide subject to these TOS are the "Services".

### **3.2**

Your Information. You represent and warrant that any information you provide about yourself is true, and you will maintain and promptly update such information to keep it true and current.

### 3.3

Privacy. You have read HostPapa's Privacy Policy and consent to the use of your personal information as described therein. [Click here](#) to view a copy of the Privacy Policy.

### 3.4

Communications. HostPapa reserves the right to communicate with you regarding the Services and your use of the Site. You consent to HostPapa's use of any contact information that you provide to HostPapa in doing so.

### 3.5

Passwords. If you are given a username and/or a password for the purpose of accessing certain features of the Services or certain features of the Site, you are responsible for all activities conducted under that username or password, and you will take all necessary steps to ensure that no one other than you uses that username or password and that password is kept confidential. If you have any reason to believe that any password assigned to you has become known to or been used by any other person, you will inform HostPapa immediately.

### 3.6

Changing Passwords. HostPapa may, at any time, change any username or password assigned by HostPapa to you, and HostPapa will notify you when it does so.

### 3.7

Insurance. Client shall maintain, at its sole cost, insurance against such risks and in such amounts that could reasonably be expected by persons acting prudently and engaged in similar activities as Client.

## 4. DESCRIPTION OF SERVICES

### 4.1

General.

#### (a)

Description. For each package of web hosting and related services that HostPapa makes available to its customers, HostPapa has prepared and published a specification (each a "Service Description"). The Service Descriptions are available on <http://www.hostpapa.co.nz> (the "Site").

#### (b)

Changes to Services. HostPapa may modify its services and the corresponding Service Descriptions from time to time. When HostPapa changes any Service, HostPapa will: (i) post the updated version of the Service Description on the Site together with the date on which it was revised; and (ii) on the home page for the Site for at least 30 days following any change to the Service Description, post a notice that the Service Description have been updated.

HostPapa may also send any email notice of the change to its affected customers.

## 4.2

### Hosting Services.

(a)

Any Service identified as a "Hosting Services" in its Service Description is a Hosting Service.

(b)

Hosting Environment. HostPapa shall: (i) maintain and operate the hardware used to host your website(s) (including monitoring the servers used on 24/7 basis); and (ii) use commercially reasonable efforts to maintain reasonable temperature and humidity levels, fire suppression controls, power conditioning equipment and uninterruptible power supplies for the proper ongoing operation of HostPapa's hosting hardware.

(c)

Disk Space. HostPapa shall provide disk space for your website(s).

Click here (<http://www.hostpapa.co.nz/terms/unlimited/>) to read more about HostPapa's definition of "unlimited" disk space for your hosted website.

(d)

Internet. HostPapa shall provide an Internet connection linking your hosted website(s) to the Internet. Click here (<http://www.hostpapa.co.nz/terms/unlimited/>) to read more about HostPapa's definition of "unlimited" bandwidth.

(e)

Remote Access. You will be given remote access to upload files for your hosted website(s) provided that you do so in a manner consistent with the TOS. Click here (<http://www.hostpapa.co.nz/remote-access/>) to read more about the various methods that can currently be used to do so.

(f)

Routing. When HostPapa hosts a website on your behalf, HostPapa will route one or more domain names to that website. The exact number of domain names that HostPapa will route on your behalf will depend on the Hosting Service to which you subscribe. Check the applicable Service Description for more information.

(g)

Back-up. You acknowledge that unless you subscribe to a Hosting Service that expressly includes the independent backup of Your Content (as defined below) as a service, HostPapa's back-up activities are primarily for HostPapa's own disaster recovery purposes, and that **YOU ARE RESPONSIBLE FOR THE STORAGE, BACK-UP AND ARCHIVING OF YOUR CONTENT**. Also note, Hosting Services include access to one or more tools via your Control Panel that allow you to back-up Your Content. Please use these tools and back-up Your

Content frequently.

(h)

Maintenance Window. When reasonably possible, any maintenance of the hardware used to host your website(s) will be conducted during one of the following "Maintenance Windows": (i) between 12:00 a.m. and 3:00 a.m. (local time in Toronto, Ontario); (ii) between 12:00 a.m. and 3:00 a.m. (local time in London, England); or (iii) between 12:00 a.m. and 3:00 a.m. (local time in Sydney, Australia). When choosing a Maintenance Window to use, HostPapa takes into account where the customers who may be affected by the maintenance activities are located (based on the addresses given to HostPapa by the customers) and what would be the early hours of the morning for most of them.

(i)

Availability. A Hosting Service is "Available" if the: (a) the hardware being used to provide it is operating; and (b) the Internet connection provided as part of the Hosting Service is operational.

(j)

Measure. HostPapa will use reasonable efforts to ensure that the Hosting Services will be Available other than for "Scheduled Maintenance" at least 99.9% of the time, measured monthly. Any maintenance or other work performed on HostPapa's technology infrastructure that takes place during the Maintenance Window or with at least 48 hours' prior notice posted to the Site is "Scheduled Maintenance".

(k)

Cooperation. You acknowledge that it is important to coordinate your maintenance activities with those of HostPapa, and you will not conduct any maintenance activities on Your Content during any Maintenance Window without first obtaining written confirmation that HostPapa will not be performing any maintenance activities during that Maintenance Window.

(l)

Free Domain Name. If the cost of registering or renewing a single domain name for one year is included in the annual Fees that you are being charged for a Hosting Service (see the applicable Service Description to find out if it is included and the eligible types of domain names) and the domain name that you wish to register or renew for use with the website being hosted is both an eligible type of domain name and available, HostPapa will register or renew (as applicable) the domain name for you. If HostPapa does so and you continue to subscribe to such Hosting Services for a period of at least 12 months, HostPapa will not charge you its then current fee for registering or renewing a domain name (as applicable). HOWEVER, IF THE HOSTING SERVICES ARE TERMINATED LESS THAN 12 MONTHS AFTER REGISTERING OR RENEWING THE DOMAIN NAME (THIS INCLUDES DURING THE FIRST 30 DAYS) OR YOU ATTEMPT TO TRANSFER THE DOMAIN NAME DURING THAT 12 MONTH PERIOD, HOSTPAPA WILL CHARGE YOU AND YOU ARE REQUIRED TO PAY HOSTPAPA'S THEN CURRENT FEE FOR REGISTERING OR RENEWING A

DOMAIN NAME (AS APPLICABLE).

#### 4.3

Domain Names Registration Services.

(a)

Assistance with Registering Only. HostPapa may assist you to register one or more top-level or second-level domain names (the "Domain Name Registration Service"). For each such domain name registered HostPapa's involvement ends with the registration. You will be the registrant, administrative contact and technical contact, and you agree to be bound by all applicable terms and conditions published by the applicable registrar

(<http://www.opensrs.com/docs/contracts/exhibita.htm>).

Please note: you are also bound by ICANN's rights and responsibilities:

<http://www.icann.org/en/resources/registrars/registrant-rights-responsibilities>

(b)

Maintenance of Domain Names. You are responsible for the ongoing maintenance, control and use of any domain name registered in your name and for any fees or taxes associated with its maintenance. To maintain your domain name registration you will need to interact directly with the applicable registrar. **FOR GREATER CLARITY, YOU ARE RESPONSIBLE FOR: (i) RENEWING THE REGISTRATION AND ENSURING THAT IT DOES NOT LAPSE; AND (ii) ADDRESSING ANY ISSUES RELATING TO YOUR DOMAIN NAME. HOSTPAPA IS NOT RESPONSIBLE FOR DOING SO.**

(c)

Please note that: (i) HostPapa is not able to guarantee that a proposed domain name is available for registration or that a registrar will register it; (ii) HostPapa will not assist with the registration on your behalf of a proposed domain name in any top-level or second-level domain unless expressly directed by you to do so; and (iii) HostPapa may but is not obligated to inform you of any proposed or new top-level or second-level domains.

(d)

Privacy Registration Service. Some registrars allow domain names to be registered without publishing the registrant's name and contact information others do not. If you wish to take advantage of any such privacy service for a domain name and you are using the Domain Name Registration Service to register the domain name, you are responsible for informing HostPapa in writing prior to the registration of the domain name that you wish to take advantage of the registrar's privacy service. You acknowledge that the privacy service is provided by the applicable registrar, not HostPapa.

(e)

As is. Assistance with registering domain names and securing related privacy services is provided "as is" and without any warranties, representations or conditions whatsoever.

(f) Domain Redemption Fee: If your domain was registered with Hostpapa and has expired, but you wish to recover the domain, HostPapa may be able to recover the domain if it is still within the redemption period. To recover a domain name that has expired but which is still within the redemption period, HostPapa must pay a redemption fee, which in turn will be passed on to you the customer. Please note that this domain redemption fee does not include the registration price of the domain that will still need to be paid to register the domain for the next year. If the domain name is not renewed or acquired during the redemption period, it will be made available again to the general public after the redemption period completes. Only domains that have been registered with HostPapa can be re-registered after expiration of the domain. If the domain that has expired was registered at another company, you will need to contact that registrar to recover the domain from the redemption period.

#### 4.4

Resale. If you have received written permission from HostPapa to resell all or part of the Services that you are receiving pursuant to this Agreement, you are responsible for providing support to your clients. If HostPapa is contacted directly by any such client, HostPapa may suspend all or part of the Services that it is providing to you. If HostPapa does so, HostPapa will give you notice of the suspension and the reason for the suspension. Once you have satisfied HostPapa that you have taken reasonable steps to inform your clients that they are to contact you for support and to ensure that you are providing that support, HostPapa will lift the suspension. There is no abatement of Fees during any such suspension. Furthermore, any acts and omissions of your clients that would be breaches of this Agreement had they been your acts or omissions are your responsibility and will be treated as if they are your acts and omissions.

#### 4.5

Additional Services. Any additional services related to the Hosting Services or Domain Name Registration Services that are requested by you and that HostPapa in its sole discretion provides ("Additional Services") are deemed to be Services provided pursuant to these TOS, and they will be provided at HostPapa's then current rates.

#### 4.6

Support.

##### (a)

FAQs. HostPapa maintains a list of frequently asked questions relating to the Hosting Services on its website located at [www.hostpapasupport.com](http://www.hostpapasupport.com) (the "Support Site"), and there are secondary lists of frequently asked questions on most of HostPapa's country-specific sites.

##### (b)

Technical Support. HostPapa will provide technical support relating to the Hosting Services via its help desk. The help desk aims to provide technical support 24/7/365. The help desk can be reached by: (i) telephone; or (ii) email (iii) chat. The email address and the telephone

number that you should use are set out on the Support Site.

(c)

Verifiable. HostPapa will use commercially reasonable efforts to resolve each problem reported to HostPapa's help desk and verifiable as being a problem or deficiency with the Hosting Services.

(d)

Assistance. When you report a problem to HostPapa's help desk, you will provide: (i) any assistance reasonably necessary to allow HostPapa to verify and resolve that problem; and (ii) all information that you are reasonably able to provide with respect to any problem.

(e)

Billing. Billing and account support is available via the web-based tool that HostPapa provides to you to manage your account. The tool is available on the Support Site. Please check HostPapa's web site for the hours that apply to your jurisdiction.

## **5. CONTENT**

### **5.1**

Intellectual Property. No intellectual property rights are transferred by HostPapa to you by these TOS.

### **5.2**

Your Content. "Your Content" means all materials, information, data or code that you upload, store, transmit, receive or process in connection with the Services. You hereby grant to HostPapa and its directors, officers, employees, agents, consultants or subcontractors the right to use, reproduce, transmit and delete (as applicable) Your Content in such manner as may be necessary to enable HostPapa to perform the Services and otherwise exercise any right or perform any obligations under this Agreement.

### **5.3**

Monitoring Your Content. Although HostPapa is not obligated to monitor content and assumes no responsibility for Your Content or the content of its other customers, HostPapa reserves the right, subject to all applicable laws, to investigate Your Content and may block access to, refuse to host, or remove any information or material that it deems to be in breach of section 6.1.

## **6. ACCEPTABLE USE**

### **6.1**

Unacceptable Use. Unacceptable use refers to any unlawful, illegal or inappropriate use as set out in this section 6. You may not use the Services or HostPapa's technology infrastructure in any manner that constitutes an unacceptable use. Unlawful or illegal use is

the creation, collection, transmission, storage or exchange of any material in violation of any applicable law or regulation. Inappropriate use includes any use or behaviour that may: (i) jeopardize HostPapa's products, services, technology infrastructure or ability to operate; or (ii) expose HostPapa to civil liability. Unlawful, illegal or inappropriate use includes use of the Services to:

- (a) possess, store, view, download, transmit, distribute (by any peer-to-peer service or otherwise) or traffic any materials that:
  - (i) include child pornography;
  - (ii) infringe any person's copyright or other intellectual property right (including unlicensed or improperly licensed applications, music, games or other materials);
  - (iii) wilfully promote hatred against or defame any identifiable individual, group or other organization;
  - (iv) can be used for attacking computer systems and networks and defacing websites (including scripts, executables or other tools);
  - (v) include any form of malware
- (b) make threats to a person's safety or property;
- (c) defame other persons;
- (d) interfere with the services that HostPapa provides to its other customers;
- (e) interfere with, disrupt or damage the servers used by HostPapa to provide such services, those of HostPapa's suppliers or those of HostPapa's other customers;
- (f) impersonate or falsely state or otherwise misrepresent your identity or affiliation with any person or entity;



- (g) wilfully bypass or subvert the physical, logical or procedural safeguards such as firewalls, web-filtering software or other access controls used by anyone to gain unauthorized access to anyone's technology infrastructure or distributing computer programs designed to assist in doing so;
- (h) any act in violation of any applicable local, provincial, state, national or international law or regulation including any laws relating to:
  - (i) the export of data or software;
  - (ii) the protection of human rights;
  - (iii) the promotion of hatred;
  - (iv) defamation;
  - (v) criminal offences;
  - (vi) the protection of intellectual property; or
  - (vii) including the sending of commercial electronic messages without consent from the recipients.

- (i) Unacceptable uses of the Services or HostPapa's technology infrastructure may also include but are not limited to: ailing, unsolicited emailings, newsgroup spamming, hardcore pornography (including but not limited to the use of animals in such pornography) or links to such sites, copyrighted MP3, illegal content, copyright infringement, trademark infringement, warez, cracks, software serial numbers, and running of any scripts, executables, or other programs or processes that can in any way adversely affect the performance of HostPapa's technology infrastructure. HostPapa will be the sole and final arbiter as to what constitutes a violation of this policy.

Disruptive Uses. You may not use the Services or HostPapa's technology infrastructure in any manner that interferes with or disrupts HostPapa's other customers. When any of the following events occurs in relation to any hosted web site, it is a disruptive use, a breach of these TOS and HostPapa may exercise its rights under section 6.6 including to suspending Services:

(i)  
generating a daily, weekly or monthly volume of network traffic that is excessive in relation to amount of network traffic typically generated by HostPapa's other clients who have purchased similar hosting services;

(ii)  
generating spikes in network traffic usage that are out of proportion (in volume or frequency) to those typically generated by HostPapa's other clients who have purchased similar hosting services;

(iii)  
on a daily, weekly or monthly basis, consuming CPU or other processing resources in a manner that is excessive in relation to amount of network traffic typically generated by HostPapa's other clients who have purchased similar hosting services;

(iv)  
even if they do not come within (i), (ii) or (iii) above, running peer-to-peer applications, peer-to-peer file sharing, proxy servers, bit torrent, online gaming servers, proxy server network, interactive relay chat (IRC), interactive chat applications, membership or community sites, file sharing, video sharing, photo sharing or other resource intensive services or applications.

(v)  
using disk space to store materials unrelated to or unnecessary for the operation of the web site for which the Hosting Services were purchased (for example, using disk space for data warehousing, email storage, backups of emails accounts, backups of all or part of any computing, telecommunications or mobile device or other forms of mass data storage); or

(vi)  
the sending of any commercial electronic messages promoting the web site or otherwise directing attention to the web site to any recipient without the recipient's consent

(vii)  
No "Spam": UCE/UBE or "spam" originating from a server located on our network or associated with a HostPapa server is not tolerated. This includes any email that promotes websites hosted on a server located on the HostPapa network, but which is sent from an email address not associated with a HostPapa account.

### 6.3

Music, Image and Video Files. Responding to and addressing copyright complaints is a time consuming process. From time to time, HostPapa scans its servers looking for MP3, MP4 and

other file formats commonly used for music, images or video. If such files are detected amongst Your Content, HostPapa may ask you to demonstrate that they are: (i) owned or properly licensed by you; and (ii) if licensed, not being used in a manner that is inconsistent with that license. If you fail to do so for any file or, in the alternative, remove the file from HostPapa's servers, it is a breach of this section 6.3 and HostPapa may exercise its rights under these TOS including section 6.6 and section 5.3

#### 6.4

Reporting. If you become aware that any person has committed, is likely to have committed or is likely to commit any act described in section 6.1, you will promptly report it to the help desk from which you receive technical support.

#### 6.5

Investigation. HostPapa reserves the right to investigate suspected breaches of this section 6, you agree to cooperate with HostPapa when asked to assist in any such investigation.

#### 6.6

Breaches. If you breach this section 6, it is probable (in HostPapa's sole discretion) that you have breached or it is likely that you will breach this section 6 (also in HostPapa's sole discretion), HostPapa in its sole discretion may suspend or revoke your access to the Services or HostPapa's technology infrastructure. Breaches of this section 6 may also result in you incurring criminal prosecution or civil liability.

#### 6.7

Others Breaches. HostPapa assumes no liability for enforcing or not enforcing the provisions in its other service agreements relating to acceptable use.

### 7. IP ADDRESSES

#### 7.1

HostPapa may assign one or more Internet Protocol addresses to you for use with the Services. You acknowledge that you have no right, title or interest in or to any IP addresses assigned to you by HostPapa or its representatives in connection any Services. HostPapa or its suppliers may change any such address at any time, but HostPapa will use reasonable efforts to give you notice of any change if the affected IP address is a fixed IP address.

### 8. PAYMENT

#### 8.1

Fees. The fixed fees and/or rates applicable to any Service are set out in the online order form for the Service (the "Fees"). They may include one-time fees (these are typically for setting up the service) and recurring fees. **PLEASE NOTE THAT THE ONLINE ORDER FORM MAY ALSO SET OUT A RATE INCREASE THAT WILL BECOME EFFECTIVE UPON THE EXPIRATION OF A PROMOTIONAL RATE. SUCH AN INCREASE WILL HAPPEN**

**WITHOUT FURTHER NOTICE TO YOU.** Otherwise, HostPapa will give you at least 30 days prior written notice of any increase to the Fees.

8.2

Promotions. From time to time, HostPapa may offer its services to new or existing clients at discounted or promotional rates. You acknowledge that any such promotion is only applicable to one of your Services if the promotion or discount is clearly set out as applicable on the online order form used that you used to order the Service.

8.3

Expenses. Unless expressly set out otherwise in an applicable Service Description, you will reimburse HostPapa for all registrar's fees or other related expenses incurred by HostPapa in relation to any third-party service described in section 4.3.

8.4

Taxes. You will pay any present or future sales, goods and services, excise, value-added, or other similar taxes including any related interest or penalties (imposed at any time by any governmental authority) arising from or related to any Services other than taxes based on HostPapa's net income.

8.5

Payment of Fees. HostPapa accepts payment by credit card (Visa, MasterCard or American Express) and by PayPal.

8.6

In Advance. Payment for Hosting Services is in advance. When you order a Hosting Service, you are required to pay the full amount of Fees for the initial term and applicable taxes. When a Hosting Service renews, you are required to pay the full amount of Fees for the renewal term and applicable taxes. A Hosting Service renews when it has not been terminated by you prior to the last date of the initial term or any renewal term for which you have paid.

8.7

Additional Services. Fees for Additional Services, applicable taxes and reimbursable expenses are due at the end of the month in which they are incurred.

8.8

Automatic Charging. When HostPapa is entitled in accordance with this Agreement to any Fees, applicable taxes or expenses, such amounts will be automatically charged to the credit card or PayPal account that HostPapa has on file for you and you authorize HostPapa to do this. HostPapa will send an invoice for these amounts to the email address that it has on file for you before doing so.

8.9

Chargebacks. Please note that should any amount that you pay by credit card or PayPal be charged back to HostPapa, you will incur an additional Fee of \$25.00. The payment will not

have been received by the due date, and:

(a)

HostPapa may restrict, suspend or terminate the affected Services; and

(b)

the overdue payment shall bear interest at the rate of one percent (1%) per month (an effective annual rate of 12.68%) or the maximum rate permitted by law, whichever is less. Further, HostPapa shall be entitled to recover its collection costs, including legal fees and expenses.

#### 8.10

30 Day Guarantee of Hosting Services.

(a)

If at any time during the 30 day period beginning on the date that you purchase Hosting Services for the first of your websites to be hosted by HostPapa you are not satisfied with the Hosting Services that you are receiving, you may terminate this Agreement by using the web-based tool that HostPapa provides to you to manage your account to terminate the Hosting Service. If you do so, you will receive a refund. THE REFUND WILL BE CALCULATED BY SUBTRACTING THE FOLLOWING AMOUNTS FROM ANY FEES PAID BY YOU FOR THE HOSTING SERVICES PURCHASED IN RELATION TO YOUR FIRST WEBSITE TO BE HOSTED BY HOSTPAPA:

(i)

ALL ONE-TIME FEES SET OUT ON THE ONLINE ORDER FORM THAT YOU COMPLETED;

(ii)

ALL FEES RELATED TO THIRD-PARTY SERVICES EITHER IDENTIFIED AS SUCH OR OPTIONALLY ADDED TO YOUR ORDER WHILE IN THE ONLINE ORDER FORM. THIS INCLUDES BUT IS NOT LIMITED TO PRODUCTS AND SERVICES SUCH AS, GOOGLE APPS, AND SSL CERTIFICATES;

(iii)

ALL FEES AND RELATED DISBURSEMENTS FOR DOMAIN NAME REGISTRATION SERVICES (INCLUDING FEES FOR RELATED PRIVACY SERVICES); AND

(iv)

ANY ADDITIONAL FEES THAT APPLY TO THE TRANSFER OF ANY RELATED DOMAIN NAME.

## 9. TERM

#### 9.1

Term. This Agreement shall be effective as of the date on which you order your first Service and shall continue until terminated in accordance with the terms and conditions set out in the remainder of this section 10 (the "Term").

### 10. SUSPENSION AND TERMINATION

#### 10.1

Suspension. If you breach of these TOS, HostPapa may, in its sole discretion, restrict or suspend the Services, without prior notice to you and without an opportunity to cure the breach. If you are given an opportunity to and you cure the breach or you demonstrate to HostPapa satisfaction that you have taken steps to prevent future breaches of the TOS, HostPapa will lift the restriction or suspension. HostPapa will give you notice of any suspension or restriction. Whether or not a restriction affects your access to Your Content is in HostPapa's sole discretion. PLEASE NOTE THAT FEES WILL BE CHARGED DURING THE PERIOD OF ANY SUSPENSION OR RESTRICTION OF SERVICES.

#### 10.2

By You. You may terminate any Service at any time by using the web-based tool that HostPapa provides to you to manage your account to terminate the Service. PLEASE NOTE: Subject to section 8.10, any amounts paid in advance for Services will not be refunded.

#### 10.3

By HostPapa. HostPapa may terminate any Service by giving you at least 30 days written notice of the termination date. HostPapa may terminate this Agreement immediately and without prior notice to you:

##### (a)

if you breach section 6 (Acceptable Use);

##### (b)

if you breach section 8 (Payment) and do not cure that breach within 10 days of the breach; or

##### (c)

if you breach any other section of these TOS and do not cure that breach within 15 days.

#### 10.4

Survival. Those sections of this Agreement which by their nature should survive the termination or expiration of this Agreement, including but not limited to 3.4, 4.2(g), 4.2(l), 4.3(b), 4.3(c), 5, 7, 8, 10.4, 11, 12, 13, 14, 16 and 17 will remain in full force and effect following the expiration or termination of this Agreement.

#### 10.5

Renewals. Services purchased for a set period (for example, three years) will be automatically renewed upon the expiry of that period unless you give HostPapa written notice of your intention to terminate them at least 30 days prior to the expiry of that period. They will be renewed at HostPapa's then current rates for such Services.

## **11. WARRANTIES AND DISCLAIMERS**

### **11.1**

THE INTERNET IS A COMPLEX NETWORK OF EQUIPMENT, SERVICES, AND PROVIDERS OF INFORMATION, THUS THE SERVICE MAY NOT BE AVAILABLE TO YOU AT ALL TIMES. YOU ACKNOWLEDGE THAT THE HOSTING SERVICES AND OTHER SERVICES MAY NOT ALWAYS BE AVAILABLE, AND WITH THE EXCEPTION OF ANY EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, HOSTPAPA EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS, WARRANTIES, OR CONDITIONS WITH RESPECT TO THE HOSTING SERVICES OR OTHERWISE ARISING FROM THIS AGREEMENT WHETHER EXPRESS OR IMPLIED, PAST OR PRESENT, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY THAT THE HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

## **12. LIMITATIONS OF LIABILITY**

### **12.1**

Limit. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF HOSTPAPA (INCLUDING ITS REPRESENTATIVES AND SUPPLIERS) TO CLIENT FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCEED THE AMOUNT PAID BY CLIENT DURING THE 12 MONTH PERIOD PRECEDING THE DATE ON WHICH CLIENT MAKES ITS FIRST CLAIM FOR DAMAGES.

### **12.2**

Indirect Damages. HostPapa (INCLUDING ITS REPRESENTATIVES AND SUPPLIERS) SHALL NOT BE LIABLE TO CLIENT OR ITS END USERS IN ANY WAY WHATSOEVER, FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF DATA, REVENUE OR PROFIT RESULTING FROM OR ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OR USE OF THE HOSTING SERVICES. THIS LIMITATION SHALL APPLY WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE, OR WHETHER HOSTPAPA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **12.3**

Some jurisdictions do not allow the exclusion of incidental, special or consequential damages. If any jurisdiction having applicability to the TOS does not permit any such exclusion or limitation, HostPapa's total liability to you in connection with any incidental, special or

consequential damages will be limited by section 12.1.

#### 12.4

Allocation of Risk. Client and HostPapa understand and agree that, to the extent permitted by applicable law, the foregoing exclusions and limitations of liability represent the parties' agreement as to allocation of risk between them in connection with their respective obligations under this Agreement. The fees payable to HostPapa reflect, and are set in reliance upon, this allocation of risk and the exclusions and limitations of liability set forth in this Agreement.

### 13. INDEMNIFICATION

#### 13.1

You agree to indemnify and hold HostPapa and its affiliates, directors, officers, employees, and agents harmless from and against any liabilities, losses, damages or costs, including reasonable attorneys' fees, incurred in connection with or arising from any third-party allegations, claims, actions, disputes, or demands asserted against any of them as a result of or relating to Your Content, your use of the Services or any wilful misconduct on your part.

### 14. AGREEMENT

#### 14.1

Entire Agreement. These TOS and all documents incorporated herein by reference constitute the complete agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous discussions, negotiations, understandings and agreements, written or oral, regarding such subject matter.

#### 14.2

Severability. Should any provision of this Agreement be held to be invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the extent permissible, and all other provisions will remain in effect and are enforceable by the parties.

#### 14.3

Waiver. No waiver of any part of this Agreement will be deemed to be a waiver of any other provision. No term of this Agreement will be deemed to be waived by reason of any previous failure to enforce it. No term of this Agreement may be waived except in a writing signed by the party waiving enforcement.

#### 14.4

Interpretation. The headings used in the Terms are for convenience of reference only. No provision of the Terms will be interpreted against any party merely because that party or its legal representative drafted the provision. All remedies are cumulative. Throughout the TOS, the term "including" or the phrases "e.g.," or "for example" have been used to mean "including, without limitation".



## **15. ASSIGNMENT**

### **15.1**

TOS. You may not assign the agreement represented by these TOS, either in whole or in part, without the prior written consent of HostPapa. Any other attempted transfer or assignment of rights hereunder shall be null and void.

### **15.2**

Domain Names. These TOS do not restrict your ability to transfer any domain for which you are the registrant. If HostPapa is the registrar for the domain name, please request our "domain name transfer instructions" by sending an email to support@hostpapasupport.com. We will send you the specific details and information about transfer of ownership.

### **15.3**

HostPapa. HostPapa may assign its rights and obligations hereunder without your prior consent.

## **16. NOTICE**

### **16.1**

Notice. Any notice or other significant communication given to you pursuant to the Terms will be in writing, addressed to any email address or address that you provided to HostPapa when acquiring your first Service (as updated by you in accordance with section 3.2) and sent to you by email or by nationally recognized overnight courier as applicable. Any notice or other significant communication given to HostPapa pursuant to the TOS will be in writing and sent to HostPapa at the address then listed on the Site in the Contact Us section by fax or nationally recognized courier. Notices will be deemed to have been received one business days following: (i) email transmission by HostPapa to you; (ii) deposit with a globally recognized overnight delivery service, all delivery charges pre-paid; or (iii) transmission if sent by facsimile and receipt confirmed by the facsimile machine used.

## **17. OTHER**

### **17.1**

Governing Law. This Agreement will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to the conflict of laws provisions. The parties consent to the jurisdiction of the courts of Ontario.

### **17.2**

Independent Contractors. The relationship between the parties is that of independent contractors, and not that of partnership, joint venture, employment, franchise or agency. Neither party may incur any obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

### 17.3

Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control that could not have been avoided by the exercise of reasonable foresight provided that such party gives the other party prompt notice of such cause and uses reasonable commercial efforts to correct such failure or delay in performance.

## 18. AMENDMENT

### 18.1

HostPapa may change the TOS from time to time and at any time. When HostPapa changes the TOS, HostPapa will: (i) post the updated version of the TOS on the Site together with the date on which it was revised; and (ii) on home page for the Site for at least 30 days following any change to the TOS post a notice that the TOS have been updated.

### 18.2

As well, HostPapa may, but is not obliged to, ask you to actively confirm your consent to the revised TOS. If HostPapa does not do so, but you continue to use the Services or Site after the changes come into effect, you will be deemed to have agreed to abide by the revised TOS. If you do not agree with the revised TOS without qualification, terminate any existing Services that you are receiving from HostPapa and instruct HostPapa to disable any password for the Site assigned to you.

### 18.3

HostPapa reserves the right, in its sole discretion, to change or modify the Site from time to time including but not limited adding or removing functionality or features or changing its name.