

## USER AGREEMENT

This AGREEMENT (the "Agreement") is made and entered into between **ManilaHosting.net**. ("Host") and ("Client") (each being referred to individually as a "Party" and collectively as the "Parties").

By registering for an account with **ManilaHosting.net** you agree to all of the Terms and Conditions without exception contained in this agreement.

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### **ACCOUNTS CAN BE AND WILL BE REFUSED AND / OR DISCONTINUED AT THE DISCRETION OF MANILAHOSTING.NET.**

This is a very careful and secure company and WE WILL check your customer input to confirm your information. Any irregularities will be cause for refusal. We do not have instant activation for this reason. but we do have HIGHLY satisfied customers on a clean service as a result!

No IRC's, BNC's, Eggdrops, IkonBoard, Movabletype, PHP Fusion, Proxy scripts, UltimateBBS, BitchX, guardservices, psyBNC Unauthorized SHELL programs, Illegal or blatantly offensive material or Spamming from a site or server. No Exceptions at any time for any reason. Customers who LOAD (Proof of use or public display NOT required) these programs or materials on any server will be terminated without recourse and billed (including penalties) and further pursued to THE FULLEST EXTENT of the LAW, including but not limited to lawsuits against the individuals responsible.

Third-party applications available in the CPanel or Fantastico are a FREE features and not a part of our paid hosting services and client's can use it in thier own risk.

### **Services**

#### **Hosting Services:**

Host agrees to provide Client with services for hosting of a site on the World Wide Web portion of the Internet (the "Web Site") as set forth or described in the Pricing of all plans. Host shall provide the Hosting Services so that the Web Site is accessible to third parties via the World Wide Web portion of the Internet as specified herein. Except as expressly provided herein, Client agrees that Host is responsible only for providing the Hosting Services, and will not responsible for providing any services or performing any tasks not specifically set forth in the Pricing of all plans. At the time of execution of this Agreement, to the extent that Client wishes to receive from Host Additional Services the arrangements for their provision shall be set forth in a separate addendum to this Agreement which is duly executed by the Parties (the "Services Addendum"), and the Services Addendum shall be incorporated into, and become a part of this Agreement. (The Hosting Services and the Additional Services will hereinafter be referred to collectively as the "Services").

**Client Content:**

Client shall be responsible for maintaining its own content via FTP (file transfer protocol) or other means to maintain such content.

Client assumes sole responsibility for (a) acquiring any authorization(s) necessary for hypertext links to third party web sites, (b) the accuracy of materials on the Web Site, including, without limitation, Client Content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted, and (c) ensuring that the Client Content does not infringe or violate any right of any third party. Notwithstanding the foregoing, Host reserves the right, in its sole discretion, to exclude or remove from the Web Site any hypertext links to third party web sites, any Client Content on the Web Site, or other content not supplied by Host which, in Host's sole reasonable discretion, may violate or infringe any law or third party rights or which otherwise exposes or potentially exposes Host to civil or criminal liability or public ridicule, provided that such right shall not place an obligation on Host to monitor or exert editorial control over the Web Site.

**Note :** Pornography and sex-related merchandising are prohibited. This includes sexual content or direct links to adult content hosted elsewhere. Sites, promoting any illegal activity, violence or content that may be damaging to our servers or any other server, or links to such sites are also prohibited.

**Examples of non-acceptable content or links are:**

Pirated software or MP3 files  
Hackers programs or archives  
Warez Sites  
Pornography Relate Websites  
Spamming Software  
Fraudulent Websites  
Businesses Engaged in illegal Services/Gambling

**Limitations on Client Content:**

Client shall place only content that does not contain any materials which are obscene, threatening, malicious, which infringe on or violate any applicable law or regulation or any proprietary, contract, moral, privacy or other third party right, or which otherwise exposes Host to civil or criminal liability. Any such materials placed on the Web Site which do not satisfy the foregoing requirements shall be deemed to be a material breach of this Agreement.

**Third-Party Applications:**

Third-party application available in the CPanel or Fantastico is FREE and not a part of our paid hosting services as stated above. Client can use these application in thier own risk and Host is not liable for any data looses or account damage that will cause by the application. Client are solely resposible for maintaining, upgrading, applying security patch to the application.

**CGI Scripts:**

Any scripts that pose a potential security risk or are deemed to be adversely affecting server performance or network integrity will be shut down or will be

automatically removed without prior notice.

**Spam:**

Client shall not send bulk e-mail, commonly know as spam, from or through their account. Any use of Client's account to send bulk e-mail shall be a material breach of this agreement and shall be grounds for immediate cancellation of Client's account without notice.

**Availability of Web Site:**

The Web Site shall be accessible to third parties via the World Wide Web portion of the Internet twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of Hosting Services due to causes beyond the control of Host or which are not reasonably foreseeable by Host, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Inter-net slow-downs or failures. In the event of any loss or interruption of Hosting Services, Client's sole and exclusive remedy and Host's sole and exclusive liability for any loss or interruption of Hosting Services shall be as follows: for loss or interruption of Hosting Services which is due to (i) causes other than scheduled maintenance and required repairs, or (ii) causes beyond the control of Host, or (iii) causes which are not reasonably foreseeable by Host, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures, which loss or interruption of Hosting Services exceeds a continual period of twenty-four (24) hours, Client shall receive a credit against future Hosting Services equal to a pro rata portion of Hosting Services fees for the period of downtime.

**Additional Storage and Data Transfer:**

In the event that the Web Site requires storage and data transfer on the Host Server which exceeds the amount of storage included in the Hosting Services, Client may, upon two (2) days written/e-mail request to Host, request that Host (a) upgrade the level of Hosting Services, or (b) acquire additional incremental storage to be included in the Hosting Services, on a time and materials basis and in accordance with the Pricing of all plans. Host shall review all such requests and determine, in consultation with Client, whether it can reasonably comply with such requests and, if so, Host shall propose a procedure and budget for complying with such request.

**Backup:**

Client are solely and entirely responsible, and Host is in NO way responsible, for the management and backup of all client data, and all updates, upgrades, and patches to any software that customers use in connection with Host services.

We strongly recommend that you always backup your account to keep copies of your data off-site with you for emergency purposes. If hardware failure and data loss occurs, you the client are responsible for data restoration. ManilaHosting.net shall not be liable for loss of data under any circumstance.

**News and Updates:**

News and any updates for the hosting services are always posted in our website <http://www.ManilaHosting.net>

**Domain Name Registration:**

As part of the initial Hosting Services, Client shall provide Host with a registered domain name, or Host shall register domain name(s) selected by Client provided that such domain name is available for registration and does not violate any ICANN or other registration services' policies, or any law or regulation. Client agrees to promptly reimburse to Host any fees paid by Host to a domain-name registrar or other registration services with respect to the registration and maintenance of such domain name.

**Domain Name Disputes:**

Host shall not be liable for any domain-name disputes which Client may enter into or otherwise encounter. Such disputes shall be governed by the relevant ICANN dispute procedures adopted by the domain-name registrar with whom Client's domain-name has been registered.

**Technical Support:**

Only email support is provided for all clients. Support is provided in first-come-first-server basis to make it fair to all the clients.

**Third-Party Application Support:**

Host will not guarantee to provide support for any third-party application available in CPanel and Plesk control panel. Please go to the website of application developer's for application supports.

**Payment**

**Hosting Services Fees:**

All processing or account creations can be done upon payment. Client shall pay Host all fees for the Hosting Services in accordance with the applicable fee and payment schedule set forth in the Pricing of all plans. Host expressly reserves the right to change its rates charged hereunder for the Services during any Renewal Term (as defined herein). Any payment without a proof that is use for payment verification will not be honored. Refunds will not be issued without a valid reason.

**30-Day Money Back Guarantee:**

All hosting plans carry a 30-day unconditional money back guarantee. If you are not completely satisfied with our services or support within the first 30 days, you will be given a full refund of the fees paid in advance (excluding setup fees) upon plan cancellation. The following services do not qualify for the 30 Day Money Back Guarantee: additional items and services; domain name registration; dedicated servers; items and services ordered through the reseller program; domain parking plus; and overage fees.

**Setup Fees:**

Client shall pay Host all setup/startup fees for the Hosting Services in accordance with the applicable monthly fee. The setup fee is NON REFUNDABLE payment, unless

the Host decides to give a complete or partial refund within 14 days of original payment.

**Non-Payment:**

All payments are due in full on the monthly anniversary date. Failure to remit payment for services within fifteen (15) consecutive days including the monthly anniversary date shall result in automatic temporary suspension of the account without any notice. Failure to remit payment for thirty (30) consecutive days, including the anniversary date, shall result in automatic termination of the account without any notice.

**Reactivation of Suspended Account:**

Reactivation of suspended account has a fee of Php 100.00 for regular account and Php 600.00 for reseller account.

**Reactivation of Terminated Account:**

Reactivation of terminated account has a fee of Php 600.00 for regular account and Php 1,000.00 for reseller account.

**Disclaimer of Warranty:**

HOST MAKES NO WARRANTIES HEREUNDER, AND HOST EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**Indemnification**

**A. Client**

Client agrees to indemnify, defend, and hold harmless Host, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim that: (i) if true, would constitute a breach of any of Client's representations, warranties, or agreements hereunder; (ii) arises out of the negligence or willful misconduct of Client; or (iii) any of the Client Content to be provided by Client hereunder or other material on the Web Site infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets, and/or licenses.

**B. Host**

Host agrees to indemnify, defend, and hold harmless Client, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action arises out of the gross negligence or willful misconduct of Host.

**Notice:**

In claiming any indemnification hereunder, the indemnified Party shall promptly provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of the foregoing paragraphs. The indemnified

Party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified Party shall not be final without the indemnified Party's written consent, which shall not be unreasonably withheld.

**Limitation of Liability:**

HOST SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, THE WEB SITE OR CLIENT'S DATA FILES, PROGRAMS OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. HOST SHALL HAVE NO LIABILITY WITH RESPECT TO HOST'S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF HOST TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO HOST BY CLIENT UNDER THIS AGREEMENT DURING THE MONTH IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

**Termination and Renewal**

**Term:**

This Agreement shall be effective when signed and thereafter shall remain in effect unless earlier terminated as otherwise provided in this Agreement (the "Initial Term"). This Agreement shall automatically be renewed beyond the Initial Term for additional one(1) year terms (each, a "Renewal Term") unless Client provides Host with a written notice of termination at least thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term.

**Termination:**

Host/Client may terminate this Agreement for any reason by providing written/email notice of termination to Host/Client thirty (30) days prior to the termination date and refunding a pro rata portion of fees paid to Client for Hosting Services not yet rendered on the date of termination. If the Client has failed to inform the Host for the account termination, the Host has the right to hold the account including the domain and Client must pay all unpaid fees to resolve this matter.

**Termination and Payment:**

Upon any termination or expiration of this Agreement, Client shall pay all unpaid and outstanding fees through the effective date of termination or expiration of this Agreement.

**Entire Agreement:**

This Agreement and Schedules referenced herein constitute the entire agreement between Client and Host with respect to the subject matter hereof and there are no representations, understandings or agreements which are not fully expressed in this

Agreement.

**Assignment:**

Client shall not assign, without the prior written consent of Host, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement.

**Modification and Notice:**

Host has the right to modify this Agreement. Any modification is effective immediately upon either a posting on the ManilaHosting.net'' Home Page (<http://www.ManilaHosting.net>), or upon notice by electronic mail, or postal mail. Client's continued use of the Host's Service following notice of any modification to this Agreement shall be conclusively deemed an acceptance of all such modification(s). Client's only right with respect to any dissatisfaction with any modifications made pursuant to this provision, or any policies or practices of Host in providing the Services, including, without limitation, (i) any change in the content of the Services, or (ii) any change in the amount or type of Service Fees, is to terminate this agreement by delivering notice to Host. Such notice will be effective upon receipt by Host.

**Waiver:**

The waiver of failure of either Party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.

**Counterparts:**

This Agreement may be executed in several counterparts, all of which taken together shall constitute the entire agreement between the Parties hereto.

**Headings:**

The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

**Approvals and Similar Actions:**

Where agreement, approval, acceptance, consent or similar action by either Party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.