



## General Statement

This Web Hosting Agreement ("Agreement") sets forth the terms and conditions governing Customer use of Webzilla ("Webzilla") for web hosting services. When you agree to these terms and conditions, you certify that you are at least 18 years of age.

PLEASE READ THIS AGREEMENT CAREFULLY.

WHEN YOU APPLY BY ANY LEGITIMATE WAY FOR THE SERVICES OF WEBZILLA, THIS CREATES A CONTRACT BETWEEN YOU (THE CUSTOMER) AND US (WEBZILLA), CONSISTING OF THE ORDER, THE APPLICABLE SERVICE DESCRIPTION AND THIS AGREEMENT. YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING ALL LEGAL AGREEMENTS UPLOADED AT **LEGAL**. YOUR USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

When you order any service from Webzilla and you are a Webzilla Account Holder, this means that you have already read and agreed to be bound by all terms and conditions of this Agreement and any policies that have been published by Webzilla, in addition to policies published by Webzilla in the future.

Webzilla reserves the right to deny service to anyone. Webzilla may modify the terms and conditions of this Agreement or the prices of its services, as well as discontinue or change the services offered.

You will be bound by the modified Agreement, prices and/or policies of Webzilla if you continue to use the services of Webzilla. Customers who have paid in advance for services will not be affected by any price changes until their term is up.

## 1. Scope of Services and Customer Obligations

- 1.1 This Agreement defines the terms and conditions of Webzilla's services as offered by Webzilla and used by you, including but not limited to the provision of web hosting services on Webzilla's dedicated servers and connectivity to the Internet ("Services"). Webzilla will provide Services for the amount of server storage space selected, in exchange for payment of fees and full compliance with the terms and conditions of this Agreement. In performing Services, Webzilla maintains control and ownership of any and all Internet protocol ("IP") numbers and addresses that are assigned to you and reserves the right to change or remove any and all IP numbers and addresses at its sole discretion.
- 1.2 You are responsible for producing, electronically uploading and maintaining HTML files, execution scripts, applets, and applications ("Upload Materials") to your website, and you hereby warrant that all Upload Materials shall be owned or properly licensed by you and shall not adversely impact the Services or violate any rights of any third parties. You are responsible for ensuring that all Upload Materials function properly and as intended. You are responsible for the results of all activity originating from your website, unless proven to be a victim of outside hacking or address forgery. You assume responsibility for all material on your website that a third party puts onto Webzilla servers (for example, material uploaded to facilitate the use of Free For All links pages). Use of Webzilla Services requires a specific level of knowledge of the use of Internet languages, protocols, and software. This Internet knowledge can vary depending on your anticipated use and the desired content of your website. Such knowledge includes, but is not limited to, the following:
  - a) Web publishing requires knowledge of HTML, properly locating and linking documents, FTPing web contents, graphics, text, sound, image mapping, etc.;

- b) FrontPage web publishing requires knowledge of the FrontPage tools as well as Telnet and FTP understanding and capability;
- c) CGI-scripts require knowledge of the UNIX environment, tar&gunzip commands, Perl, CShell scripts, .htaccess, .htpasswd, permissions, etc.;
- d) Mail requires knowledge of the use of mail clients to receive and send mail, etc.

By agreeing to this agreement you confirm that you have the necessary knowledge to create, modify and maintain your website. Webzilla assumes no responsibility for providing you with such knowledge. If you wish Webzilla to analyze any of your code/les/data, then Webzilla may charge you at the current development/consulting rate. Webzilla, as a courtesy, may review code/les/data at no charge to Webzilla Tier 1 Customers.

- 1.3 In connection with the Services offered, Webzilla may provide certain tools and software for your use, including, but not limited to, specific specialty scripting software and/or specific programming language software for server management.
- 1.4 During the period Webzilla provides Services to you, you hereby grant to Webzilla a nonexclusive, royalty-free, worldwide right and license to digitally display and host your website and its content, and to use the website's trademarks, service marks, trade names, logos and other commercial or product/service designations in connection with the website and such Services.
- 1.5 For server restoration purposes only, Webzilla makes backups of websites nightly; however, Webzilla makes no guarantees of any kind, either expressed or implied, as to the integrity of these backups. You are responsible for maintaining local copies of your website and/or data. If loss of data occurs due to an error of Webzilla, Webzilla will attempt to recover the data for no charge and if this is not possible, Webzilla will attempt to recover the data from the most recent archive for a \$50 fee. If Webzilla is unable to recover your website and/or data, then you must restore from your own local copy or backup.
- 1.6 Webzilla reserves the right to monitor its systems electronically and to access and disclose any information as permitted or required by any law, regulation or other governmental request to operate its systems properly, to protect itself or its account holders or for any other reason, in good faith, it deems necessary. Webzilla will fully cooperate with law enforcement authorities in investigating suspected lawbreakers, and reserves the right to report to law enforcement any suspected illegal activity it becomes aware of. It is not Webzilla's intention that its Services or facilities be used in contravention of the Communications Decency Act of 1996 (the "CDA") or any other applicable law. Webzilla is a service provider under the CDA and section 230 provides immunity for service providers as specified in the law.
- 1.7 You agree to comply with the requirements of the CDA and the Digital Millennium Copyright Act (the "DMCA"), and acknowledge that Webzilla is a "service provider" under the DMCA and is therefore immune from liability as specified under the DMCA, including 17 U.S.C. Art. 512. Consistent with the DMCA, Webzilla will accommodate standard technical measures used to identify and protect copyrighted works, and, as further described herein, Webzilla has a policy of terminating account holders who are repeat copyright infringers.
- 1.8 Websites are unmodified forums containing the personal opinions and other expressions of the people who post entries on a wide range of topics. Neither the content of websites located on Webzilla's servers, nor the links to other websites, are screened, approved, reviewed or endorsed by Webzilla. Webzilla is not a publisher of any of the content of the websites residing on its serv-

ers, or of any content that might be available through the links to and from the websites on its servers, and is acting solely as an Internet web hosting service provider. Any text or other material on such websites comprise the opinions of the specific authors of the material, and are not Webzilla's statements of advice, opinions or information.

- 1.9 Webzilla charges for extra bandwidth for accounts that go over their allocated package amount. Extra bandwidth charges are billed at the first of every month at the individual rates via 95% method.

## **2. Peace of Mind Backup Service**

All Webzilla's managed clients, are given access to the automated backup cloud storage solution ("Peace of mind Backup service"). The Backup Services are provided on a mandatory basis. The first 30 days the service is provided free of charge for all managed clients. Clients are entitled to cancel this service during the first 60 days from the time the first backup is created ("Minimum Service Term"). In case the service is not cancelled during this period, the client is obligated to pay the full cost of the service for the period he remains a Webzilla managed client. If a Customer cancels the Service before completion of the Minimum Service Term there is no Termination Fee. All managed clients have the ability to cancel the "Peace of mind Backup service" for free at any given time, as long as the provided service has been fully paid at the moment of the termination.

## **3. Limited Warranty; Limitation of Liability; Indemnification**

### **3.1 Limited Warranty**

You acknowledge that the Services are provided on an "as is" basis. Neither Webzilla, nor any of its employees or agents, warrants that the Services will be uninterrupted, error-free or free from viruses and/or other harmful components. Webzilla is not responsible for and hereby disclaims any warranties, either expressed or implied, regarding the quality, accuracy, or validity of the data and/or completeness, non-infringement, merchantability or fitness for a particular purpose of information available on its servers or residing on or passing through its interconnecting networks. Use of information obtained from or through the Services is at your risk. Under no circumstances will Webzilla be liable to you or any other person for any loss or damage caused by your reliance on information available on its servers or obtained through the Services.

### **3.2 Limitation of Liability**

You acknowledge that you are not in any way associated with Webzilla, and that the contents of your website or service provided to your Customers are and will be exclusively supplied by, provided by, and edited by you, and that you are not associated with Webzilla, which is merely a hosting company that will not edit or inspect the material or data you place onto its servers.

IN NO EVENT SHALL WEBZILLA BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND DAMAGES RELATED TO CORRUPTION OR DELETION OF WEBSITE CONTENTS, EMAIL DATA AND/OR DATABASE CONTENTS) ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE WEBZILLA'S SERVICES (INCLUDING, BUT NOT LIMITED TO, INOPERABILITY OF WEBZILLA'S SERVERS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF WEBZILLA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL WEBZILLA'S MAXIMUM LIABILITY EXCEED THE TOTAL AMOUNT PAID BY YOU TO WEBZILLA FOR THE SERVICES DURING THE PRIOR TWELVE (12) MONTHS. TO THE EXTENT APPLICABLE, LAW DOES NOT ALLOW THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, WEBZILLA'S LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW.

### 3.2 Indemnification

You agree to indemnify, defend and hold Webzilla and its affiliates, directors, officers, employees, and agents harmless from and against any liabilities, losses, damages or costs, including reasonable attorneys' fees, resulting from any third-party claim, action, dispute, or demand related to your use of the Services, your violation of any of the provisions of this Agreement, or from your placement or transmission of any materials or content onto Webzilla's servers. Such liabilities may include, but are not limited to, those arising from the following:

- a) with respect to your business,
  - (i) infringement or misappropriation of any intellectual property rights;
  - (ii) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity; or
  - (iii) spamming, or any other offensive, harassing or illegal conduct or violation of the acceptable uses described herein or anti-spam policy;
- b) any damage to or destruction of Webzilla's equipment or to any other account holder, which damage is caused by or otherwise results from acts or omissions by you, your representative(s) or your designees;
- c) any personal injury or property damage arising out of your activities related to the Services, unless such injury or property damage is caused solely by Webzilla's gross negligence or willful misconduct;
- d) any other damage arising from your equipment or your business.

### 4. Payment of Fees

Fees are due either monthly or annually in advance of service. You will receive an invoice by email each month on the first of the month during which your service originally commenced for the forthcoming month's service. This is your monthly billing date. Web hosting payments are not refundable and cannot be canceled after purchase, subject to a ten (10) day grace period upon commencement of any service provided by Webzilla where you can request for a cancellation and refund if you are not satisfied with the service.

- 4.1 Webzilla will send a notice of fee increases via email 30 days before such increases take effect.
- 4.2 You agree to provide Webzilla with accurate and complete billing information, including your legal name, address, telephone number, e-mail address, and applicable payment date, and you agree to update this information immediately if any change occurs. Payments must be submitted in advance of receiving the Services.
- 4.3 You acknowledge that Webzilla will bill your credit card prior to the Payment Interval you have chosen. You authorize automatic billing by Webzilla on an ongoing basis during the term of this Agreement.
- 4.4 Webzilla will charge a \$15 service charge per credit card chargeback transaction and a \$25 service charge per returned check.
- 4.5 Delinquent accounts are those that remain unpaid at the beginning of the next Payment Interval. The Services will be suspended if your account is delinquent. Notwithstanding any other rights Webzilla may have through this Agreement, all of your website contents will be destroyed if your account is delinquent for 60 days. Webzilla accounts continue to accrue charges while they are delinquent or if the Services are suspended.

4.6 You acknowledge responsibility for your account until payment in full is made.

4.7 You should cover all bank charges, including correspondent bank charges.

## 5. Acceptable Use Policy

### 5.1 Use and Misuse of the Services

All complaints of abuse, violation and misuse of the Services, whether described in this Section 5 or otherwise, shall be investigated promptly. If you are not sure whether your planned actions would constitute an abuse, violation or misuse, please ask first by contacting [support@webzilla.com](mailto:support@webzilla.com).

You are responsible for all uses of your website, with or without your knowledge or consent. You agree to use the Services only for lawful purposes, in compliance with all applicable laws. Illegality includes, but is not limited to:

- ▶ drug dealing;
- ▶ attempting, without authorization, to access a computer system;
- ▶ pirating (distributing copyrighted material in violation of copyright law, especially MP3s, MPEGs, ROMs, and ROM emulators);
- ▶ illegal gambling;
- ▶ schemes to defraud;
- ▶ trafficking in obscene material;
- ▶ sending a message or displaying content that is obscene, lewd, lascivious, filthy, or indecent with intent to annoy, abuse, threaten, or harass another person;
- ▶ threatening bodily harm or damage to individuals or groups;
- ▶ violating any export restrictions;
- ▶ stalking;
- ▶ or violating other laws.

Linking to illegal material is also prohibited.

When Webzilla becomes aware of possible violations of this Agreement, Webzilla may initiate an investigation that may include gathering information from you and the complaining party, if any, and examination of material on Webzilla's servers.

Webzilla is willing to consider, of the company's own volition, complaints sent to a designated email address or sent in writing to the appropriate street address, that appear to be genuine and meritorious; but any such complaint may be considered to be prejudiced if it does not contain the name, address, telephone number, and an appropriate email address of the complainant.

The above private information of the complainant shall be considered confidential and shall not be disclosed to anyone, except the appropriate authorities conducting an investigation and the employees of Webzilla who might reasonably need access to this information.



Any person submitting a false complaint or complaints that fail to meet a reasonable standard of accuracy, or that contain misleading information, shall be liable for indemnifying Webzilla for any damages caused as a result of reliance on such complaint or information.

Webzilla, by its sole discretion, will determine what action shall be taken in response to a violation on a case-by-case basis.

Violations of this Agreement could subject you to criminal or civil liability.

BY ACCEPTING THIS AGREEMENT, YOU AGREE TO WAIVE AND HOLD WEBZILLA HARMLESS FROM ANY CLAIMS RELATING TO ANY ACTION TAKEN BY WEBZILLA AS PART OF ITS INVESTIGATION OF A SUSPECTED VIOLATION OF THIS AGREEMENT OR AS A RESULT OF THE INVESTIGATION'S CONCLUSION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. THIS MEANS YOU CANNOT SUE OR RECOVER ANY DAMAGES WHATSOEVER FROM WEBZILLA AS A RESULT OF

- ▶ WEBZILLA'S DECISION TO REMOVE MATERIAL FROM ITS SERVERS;
- ▶ WARN YOU, SUSPEND OR TERMINATE YOUR ACCOUNT, OR TAKE ANY OTHER ACTION DURING THE INVESTIGATION OF A SUSPECTED VIOLATION;
- ▶ AS A RESULT OF WEBZILLA'S CONCLUSION THAT A VIOLATION HAS OCCURRED.

THIS WAIVER APPLIES TO ALL VIOLATIONS DESCRIBED IN THIS AGREEMENT.

## 5.2 Use and Misuse of Materials

Materials in the public domain (e.g., images, text, and programs) may be downloaded or uploaded using the Services.

You may also redistribute materials in the public domain. You assume all risks regarding the determination of whether the material is in the public domain. You are prohibited from storing, distributing or transmitting any unlawful material through the Services.

Examples of prohibited material include, but are not limited to:

- ▶ Threats of physical harm, excessively violent material that incites violence, threatens violence, or contains harassing content or hate speech;
- ▶ Copyrighted, trademarked or other proprietary material, used without proper authorization or intended to assist others in defeating technical copyright protections, or material that clearly infringes on another persons' trademark or service mark, patent, or other property right;
- ▶ Material that is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
- ▶ Material that is defamatory or violates a person's privacy;
- ▶ Material that creates a risk to any person's safety or health, creates a risk to public safety or health, compromises national security, or interferes with an investigation by law enforcement;
- ▶ Material that improperly exposes trade secrets or other confidential or proprietary information of another person or institution;

- ▶ Material that promotes illegal drugs, violates export control laws, or relates to illegal gambling or illegal arms trafficking;
- ▶ Material that promotes terrorism or any kind of ethnic, social or religious discord;
- ▶ Material that constitutes, fosters, or promotes child pornography. Marketing a site utilizing such content, and including words such as "Kids", "Lolita", "Pedo", "Peta", "Peto", "Preteen", "Pedophile", "Underage", "Child", or any other words, images, or descriptions that would lead someone to believe that the models are less than 18 years of age, is not permitted anywhere on any venue, including the URL and meta tags;
- ▶ The posting or display of any image or wording depicting or related to incest, snuff, scat or the elimination of any bodily waste on another person, mutilation or rape, anywhere on the site, including the URL and meta tags;
- ▶ The posting or display of any image or wording depicting or related to bestiality anywhere on the site, including the URL and meta tags;
- ▶ Material that is otherwise illegal or solicits or encourages conduct that is illegal under laws applicable to you or to Webzilla; or that is otherwise malicious, fraudulent, or could result in retaliation against Webzilla by offended viewers.

Unacceptable uses of website content also includes the presence of the following programs or activities associated with these programs or activities, regardless of whether or not any actual intrusion results in the corruption or loss of data:

- ▶ Server broadcast messages or any message sent on an intrusive basis to any directly or indirectly attached network;
- ▶ Attempts to circumvent any user authentication or security of host, network, or account;
- ▶ Accessing data not intended for user;
- ▶ Probing the security of any network;
- ▶ Spawning dozens of processes;
- ▶ Port scans, ping floods, packet spoofing, or forging router information; Denial of service attacks, sniffers, flooding, spoofing, ping bombing, smurfs, winnuke, land and teardrop;
- ▶ Promulgation of viruses; or IRC bots, such as eggdrop or BitchX.

Webzilla supports free speech on the Internet and will not suspend or cancel your account simply because it disagrees with your views expressed at your website. However, examples of unacceptable activities include cases such as, posting private information about a person without his or her consent, defaming a person or business, and knowingly making available code that will have a deleterious effect on third-party computers.

Where there are allegations that your online activity has violated the legal rights of a third party, Webzilla will not substitute itself for a court of law in deciding tort claims raised by the third party.

### 5.3 E-mail use; Bulk or Commercial E-mail

You must comply with the CAN-SPAM Act of 2003 and other laws and regulations applicable to bulk or commercial email. In addition, you must obtain Webzilla's advance approval for any bulk email, which will not be given unless you are able to demonstrate all of the following to Webzilla's reasonable satisfaction:

- ▶ Your intended recipients have given their consent to receive email via some affirmative means, such as an opt-in procedure;
- ▶ Your procedures for soliciting consent include reasonable means to ensure that the person giving consent is the owner of the email address for which the consent is given;
- ▶ You retain evidence of the recipients' consent in a form that may be promptly produced upon request, and you honor recipients' and Webzilla's requests to produce consent evidence within 72 hours of receipt of the request;
- ▶ You have procedures in place that allow a recipient to easily revoke his or her consent, such as a link in the body of the e-mail, or instructions to reply with the word "Remove" in the subject line. Revocations of consent must be honored within 72 hours, and you must notify recipients that their revocation of their consent will be honored within 72 hours;
- ▶ You must post an e-mail address for complaints (such as abuse@yourdomain.com) in a conspicuous place on any Web site associated with the email, you must register that address at abuse.net, and you must promptly respond to messages sent to that address;
- ▶ You must have a Privacy Policy posted for each domain associated with the mailing;
- ▶ You have the means to track anonymous complaints;
- ▶ You may not obscure the source of your email in any manner. Your email must include the recipient's email address in the body of the message or in the "TO" line of the email.

These policies apply to messages sent using your Webzilla Services, or to messages sent from any network by you or any person on your behalf that directly or indirectly refer the recipient to a site or an e-mail address hosted via your Webzilla service. In addition, you may not use a third-party e-mail service that does not practice similar procedures for all its Customers. Webzilla may test and otherwise monitor your compliance with its requirements, and may block the transmission of e-mail that violates these provisions.

You may not use Webzilla mail services, servers or components to send out mail from other sites or services that are not hosted with Webzilla. You may not use Webzilla mail services, servers or components to send out mail advertisements for other sites not pertaining to the website you are hosting with Webzilla. Unacceptable uses of website content also include the presence of the following programs or the activities associated with them, regardless of whether or not any actual intrusion results in the corruption or loss of data.

### 5.4 System Security

You are prohibited from utilizing the Services to compromise the security of system resources or accounts on servers at Webzilla or at any other site. Use or distribution of tools designed for com-



promising security or containing viruses or trojans are prohibited. Examples of these tools include, but are not limited to, password guessing programs, cracking tools or network probing tools. If you are involved in violations of system security, Webzilla reserves the right to release all usernames of users involved in such violations to system administrators at other sites in order to assist them in resolving security incidents. Webzilla also will fully cooperate with law enforcement authorities in investigating suspected lawbreakers.

## 5.5 System Resources

System abuse includes any use of Webzilla resources that disrupts the normal use of its servers or services for others. Examples of system abuse include running excessive numbers of processes or consuming excessive amounts of CPU time, memory or disk space.

## 5.6 99.99% Uptime Guarantee

Webzilla shall use commercially best efforts to provide 99.99% Services availability. Services availability is calculated by the number of hours the service is available to customers plus the total number of hours, if any, the service is scheduled to be unavailable, divided by the total number of hours in that month.

In the event that there is no services availability, Webzilla will credit the following month's service fee as follows:

### Customer Website Availability Credit:

- ▶ 99.9% to 99.98%: 5% credit
- ▶ 95% to 99.8%: 25% credit
- ▶ 90% to 94.9%: 50% credit
- ▶ 89.9% or below: 100% credit

In order for you to receive a credit on your account, you must request such credit within seven (7) business days after you experienced no Web Site Availability. You must request credit by sending an electronic mail message to [support@webzilla.com](mailto:support@webzilla.com)

For security, the body of this message must contain your server ID, the dates and times of the unavailability of your Web site, and such other Customer identification requested by Webzilla. Credits will usually be applied within sixty (60) days of your credit request. Credit to your account will be your sole and exclusive remedy in the event that there is no Web Site Availability. Credits will not be provided to you in the event that you have no Web Site Availability resulting from:

- ▶ scheduled maintenance as posted from time to time at Webzilla;
- ▶ your behavior or the performance or failure of your equipment, facilities or applications, or circumstances beyond Webzilla's reasonable control, including, without limitation, acts of any governmental body; war; insurrection; sabotage; embargo; fire; flood; strike or other labor disturbance; interruption of or delay in transportation; unavailability of, interruption or delay in telecommunications or third party services (including DNS propagation); failure of third-party software or hardware; or inability to obtain raw materials, supplies, or power used in, or equipment needed for, provision of your Web site.

## 6. Webzilla's Right to Terminate Agreement

- a) Webzilla reserves the right to suspend or terminate Services to you and remove or prevent access to any material from your website at any time, without prior notice or liability, for any conduct that Webzilla, in its sole discretion, believes violates this Agreement or is otherwise harmful to Webzilla's interests or the interests of other accountholders.
- b) Webzilla also reserves the right to comply with the takedown provisions of the DMCA and to seek injunctive, declaratory, interpleader or other judicial or equitable relief (and, pending such action, to suspend all access to your website) if any third-party claim is made that your website content or use violates any of the acceptable uses or your obligations or representations described in this Agreement.

## 7. Limitation of Damages

Webzilla's obligations to you are defined by this Agreement. Webzilla is not liable to you for failing to provide the Services unless the failure results from a breach of an applicable Service Level Agreement, or results from gross negligence or willful misconduct. The credits stated in any applicable Service Level Agreement are your sole and exclusive remedy for failure to meet those guarantees for which credits are provided unless such failure is due to Webzilla's willful misconduct. Neither of us (nor any of our employees, agents, affiliates or suppliers) is liable to the other for any lost profits or any other indirect, special, incidental or consequential loss or damages of any kind, or for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages. Notwithstanding anything in the Agreement to the contrary, except for liability based on willful misconduct or fraudulent misrepresentation or personal injury resulting from Webzilla's negligence, the maximum aggregate monetary liability of Webzilla and any of its agents, affiliates, suppliers or employees in connection with the Services, the Agreement, and any act or omission related to the Services or Agreement, under any theory of law (including breach of contract, tort, strict liability, violation of law, and infringement) shall not exceed the greater of (i) the amount of fees you paid for the Services for the two months prior to the occurrence of the event giving rise to the claim, or (ii) Three Hundred Dollars (\$300.00).

## 8. Cancellation of Accounts

- 8.1 This Master Agreement, together with the SLA, the AUP, any executed Internet Services Master Agreement, any executed Internet Order Form - No.1, and any subsequently executed Order Form, represent the entire understanding of the Parties with respect to the subject matter hereof. The Agreement cannot be modified except in writing and when signed by both Parties.
- 8.2 All Webzilla accounts must be paid in full before the cancellation will be considered complete.
- 8.3 When canceling an account, cancellations take effect immediately and do not continue for the amount of your term left on your account. Webzilla does not give refunds for the remaining term on any account that was canceled after the charges have been billed. Webzilla will send out an invoice via email five (5) days prior to billing. Customer must inform Webzilla of cancellation prior to the new billing date. Any charges incurred after the billing date and cancellation are non-refundable. It is the Customer's responsibility to make sure Webzilla has accurate e-mail address and billing information on file, so the invoices can reach you.

- 8.4 If your account is suspended or terminated for any reason permitted by this Agreement, Webzilla may, at its sole discretion, permanently delete your website contents from Webzilla servers, and Webzilla will not be able to reopen or restore such content. If your account has been canceled or suspended due to a violation of our Terms and Conditions, and Acceptable Use policy, no refunds will be given on any pre-paid term.

## 9. Arbitration and Governing Law

Except for Webzilla's compliance with takedown provisions of the DMCA, or injunctive or other equitable actions initiated by Webzilla pursuant to Section 6(b), if any controversy or dispute arises in connection with this Agreement, the Services or your use of Webzilla's servers, such controversy or dispute shall first be presented for resolution by Webzilla to you. If the Customer signed an Internet Master Services Agreement with a Webzilla company then this Agreement will be construed and enforced in accordance with the laws as specified in clause 6.1 of the Internet Master Services Agreement. If the Customer did not sign an Internet Master Services Agreement with a Webzilla Company then this Agreement and each Order Form shall be construed and enforced in accordance with the laws of The Netherlands and Customer hereby consents to the jurisdiction of the courts of Amsterdam, The Netherlands with respect to any dispute, controversy or other matter relating to or arising out of the Agreement or any Order Form.

## 10. Miscellaneous

You may not assign your rights and obligations under this Agreement without the prior written consent of Webzilla, which may be withheld at Webzilla's discretion. Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

The failure of Webzilla to require your performance of any provision hereof shall not affect the right to require such performance thereafter; nor shall the waiver by Webzilla of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Any action for any claim arising under, or in connection with, this Agreement must be commenced by you within one year after the alleged cause of action has accrued or after the date of termination of this Agreement, whichever is earlier.

In the event that any provision of this Agreement is deemed unenforceable or invalid, such unenforceability or invalidity shall not affect the remainder of this Agreement. Such provision may be amended or replaced with a provision that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of the parties as reflected in the original provision. No provision of this Agreement may be amended or modified by you except by means of a written document signed or expressly assented to by Webzilla. All terms and conditions of this Agreement that should by their nature survive termination of this Agreement shall so survive. This Agreement and any Order form, together with all amendments or modifications to any of them, constitute the complete and exclusive agreement between you and Webzilla.