

# tos

## terms of service

This AGREEMENT (the "Agreement") is made and entered into between Bitstop Network Services, Inc. ("Host") and \_\_\_\_\_ ("Client") (each being referred to individually as a "Party" and collectively as the "Parties"). By registering for an account with Bitstop Network Services, Inc. you agree to all of the terms and conditions contained in this agreement.

### 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 Schedule contained in this document. 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 Host is not responsible for providing any services or performing any tasks not specifically set forth in the Pricing Schedule. 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").

#### Content

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

#### 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.

#### 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.

#### Additional Storage and Transfer

In the event that the Web Site requires storage and 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 notice 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 Schedule hereto. 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.

#### Client 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.

### 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.

### 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.

### Fees

#### Hosting Services Fees

Client shall pay Host all fees for the Hosting Services in accordance with the applicable fee and payment schedule set forth in the Pricing Schedule hereto. Host expressly reserves the right to change its rates charged hereunder for the Services during any Renewal Term (as defined herein). Refunds will not be issued without a valid reason.

#### Late Payment

Host may terminate service when any payment is late and shall not be responsible for maintaining any data Client may have uploaded to Host's server.

#### 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.

#### 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 3(3) days prior to the expiration of the Initial Term or the then-current Renewal Term.

#### Termination

Host may terminate this Agreement at any time and for any reason by providing written notice of termination to Client and refunding a pro rata portion of fees paid to Client for Hosting Services not yet rendered on the date of termination.

#### 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.

#### Force Majeure

Except for the payment of fees by Client, if the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of either Party, that Party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

#### Philippine Laws

This Agreement shall be governed in all respects by the laws of the Republic of the Philippines without regard to its conflict of laws provisions, and Client and Host agree that the sole venue and jurisdiction for disputes arising from this Agreement shall be the appropriate province or provincial court located in the City of Dagupan, and Client and Host hereby submit to the jurisdiction of such courts.

#### 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 Bitstop Network Services' Home Page (<http://www.bitstop.ph>), 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.

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### 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.

### Severability

If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

### 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.

### Survival

All provisions of this Agreement relating to Client warranties, confidentiality, non-disclosure, proprietary rights, limitation of liability, Client indemnification obligations and payment obligations shall survive the termination or expiration of this Agreement.

### 99.0% Uptime

Bitstop Network Services, Inc. guarantees a 99.0% uptime. If Bitstop Network Services, Inc. fails to meet the 99.0% uptime guarantee, and it is not due to one of the items below, "credits" will be available to each client. Bitstop Network Services, Inc. does not give a full month's rebate of hosting for minor downtime.

- *Network floods, hacks, attacks from outside parties or individuals (DDoS & DoS)*
- *Exploits and bugs in software that cause security issues or downtime*
- *Backbone failures*
- *Client's acts or own faults*