



## TERMS of SERVICE AGREEMENT

This "TERMS of SERVICE" AGREEMENT (hereinafter referred to as "AGREEMENT"), is made and entered into on the "DATE" CUSTOMER begins the use of services from StrategicWebs, LLC [hereafter referred to as "STRATEGICWEBS"] and hereunder shall constitute acceptance by CUSTOMER of this AGREEMENT and all of its terms and conditions.

This AGREEMENT establishes the mutually agreeable terms and conditions under which STRATEGICWEBS shall provide Website Design and/or Hosting Services to CUSTOMER.

CUSTOMER may have other agreements in effect with STRATEGICWEBS. Where the "Terms and Conditions" between the other agreements and this AGREEMENT over-lap; the "Terms and Conditions" of this AGREEMENT supersede and replace any over-lapping "Terms and Conditions" of any other AGREEMENT.

STRATEGICWEBS reserves the right to revise its "Terms and Conditions" contained in this AGREEMENT and any other policies at any time without notice. The "Terms and Conditions" contained herein supersede and replace any other agreement not referenced with-in this AGREEMENT or negotiation between CUSTOMER and STRATEGICWEBS whether oral, written or otherwise including any statements made by any representative of STRATEGICWEBS at any time unless specifically accepted in writing by STRATEGICWEBS.

No additional terms and conditions stated by CUSTOMER in acknowledging or otherwise accepting this AGREEMENT shall be binding upon STRATEGICWEBS unless specifically accepted in writing by STRATEGICWEBS.

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## ARTICLE 1

### DEFINITIONS

- 1.1 "Hosting Uptime".** Refers to the percentage of time the website is accessible via the internet. STRATEGICWEBS aims for a 99.9% uptime, but there may be planned (or unplanned) maintenance windows where the website and/or eMail would not be available.
- 1.2 "Scope of Services".** Means the totality of "Web Hosting Services" agreed to and ordered.
- 1.3 "Service Commencement Date (SCD)".** SCD refers to the first date STRATEGICWEBS provides Services to CUSTOMER.
- 1.4 "Service Level Agreement (SLA)".** SLA refers to the percentage guaranteed by the STRATEGICWEBS and defines reduced costs associated with services provided if defined performance goals are not met.
- 1.5 "Term of CUSTOMER Agreement".** Refers to the period of time associated with the commitment by CUSTOMER to maintain "Service" with STRATEGICWEBS (i.e. Month to Month, 1 Year Commitment or 2 Year Commitment).
- 1.6 "Total Amount".** Means the total amount of the charges associated with a "Web Hosting Services Order & Setup Form" including State Sales Tax and any other associated charges.
- 1.7 "Total Duration".** Means the total period of time associated with a "Services" engagement.
- 1.8 "Web Hosting Service".** Refers to a service which provides server space and data transfer allowances to CUSTOMER for the purposes of hosting/displaying an organization's and/or individual's website, email and/or FTP accessible via the World Wide Web. Services may also include other types of services as provided and would be described more specifically in the "Web Hosting Services Order & Setup Form".
- 1.9 "Web Hosting Services Order & Setup Form".** Refers to a STRATEGICWEBS' Form used to order and request "Web Hosting Services".

## ARTICLE 2

### ENTIRE AGREEMENT

- 2.1 "Entire Agreement".** This AGREEMENT and its exhibits:
- 2.1.1 "Acceptable Use Policy (AUP)"**
  - 2.1.2 "Anti-Spam Policy (A-SP)"**
  - 2.1.3 "Domain Registration Policy"**
  - 2.1.4 "Web Hosting Services Order & Setup Forms"**

Constitute the complete and exclusive agreement between STRATEGICWEBS and CUSTOMER and supersede any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this AGREEMENT. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding. CUSTOMER'S additional or different terms and

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conditions shall not apply. The terms and conditions of this AGREEMENT may not be changed except by an amendment signed by an authorized representative of each party.

### ARTICLE 3 AMENDMENT

**3.1** STRATEGICWEBS may without advance notice amend this AGREEMENT from time to time, and will do so by posting the new AGREEMENT on the STRATEGICWEBS web site in place of the old.

**3.1.1 "Future Accounts"**. Each and every such amendment shall become effective immediately for all future accounts.

**3.1.2 "Pre-existing Accounts"**. Notification of each and every such amendment shall be emailed and addressed to the "Primary Customer Contact" listed on the "Web Hosting Services Order & Setup Form" with a Thirty (30) Day option to Opt-Out of the amended AGREEMENT. By default, if no response is received from the CUSTOMER within the Thirty (30) Day Opt-Out period, such amended AGREEMENT shall become effective on the 1<sup>st</sup> day following the Thirty (30) Day Opt-Out period.

### ARTICLE 4 TERM

**4.1 "AGREEMENT TERM"**. This AGREEMENT will become effective on the "**Date**" CUSTOMER orders service with STRATEGICWEBS and shall continue in force until termination according to the terms of this AGREEMENT.

**4.1.1 "Service Commencement Date"**. The Commencement of Services ("Service Commencement Date") shall begin on the date that STRATEGICWEBS generates an email message to CUSTOMER announcing the activation of the CUSTOMER's account.

**4.1.2 "Service Term"**. The "Initial Service Term" and any "Continued Service Term" may be referred to collectively in this Agreement as the "Service Term."

**4.1.3 "Initial Service Term"**. The "Initial Service Term" shall begin on the "Service Commencement Date" and shall continue as stated in the "Web Hosting Services Order & Setup Form".

**4.1.4 "Continued Service Term"**. Upon expiration of the "Initial Service Term", the current services as defined in the "Web Hosting Services Order & Setup Form" shall automatically renew under a "Continued Service Term". The "Continued Service Term" shall maintain all services, commitment periods and price levels as the "Initial Service Term" unless STRATEGICWEBS or CUSTOMER provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the "Initial Service Term" or then-current "Continued Service Term", as applicable.

### ARTICLE 5 TERMINATION

**5.1 "Termination - Immediately"**. This AGREEMENT and any Services provided under any "Web Hosting Services Order & Setup Forms" may be terminated immediately upon notice in writing:

**5.1.1 "Material Breach"**. By either party if the other party is in material breach of any of its obligations hereunder and fails to remedy such breach within thirty (30) days of receipt of a written notice by the other party, which specifies the material breach.

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**5.1.2 "Insolvency"**. By either party if the other party has a receiver appointed, or an assignee for the benefit of creditors or in the event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.

**5.1.3 "Applicable Law / Acceptable Use Policy (AUP)"**. By STRATEGICWEBS, if in STRATEGICWEBS' own discretion, CUSTOMER violated "Applicable Law or STRATEGICWEBS' / Acceptable Use Policy (AUP)".

**5.1.4 "Anti-Spam Policy Violation"**. By STRATEGICWEBS, if in STRATEGICWEBS' own discretion, CUSTOMER violated STRATEGICWEBS' Anti-Spam Policy.

**5.1.5 "Abuse"**. Any abuse of our staff in any medium or format will result in the immediate suspension or termination of your services.

**5.2 "Termination – Due to Non-Payment"**. This AGREEMENT and any Services provided under any "Web Hosting Services Order & Setup Forms" may be terminated due to non-payment upon notice in writing:

**5.2.1 "Non-Payment"**. By STRATEGICWEBS if CUSTOMER maintains any unpaid past due balances for more than 90 days.

**5.3 "Termination - Convenience"**. Either party may terminate this AGREEMENT or any Services provided under any "Web Hosting Services Order & Setup Forms" for convenience upon thirty (30) days prior written notice to the other party. Any termination of this AGREEMENT and any Services provided under any "Web Hosting Services Order & Setup Forms" shall not relieve CUSTOMER of its obligations under any "Web Hosting Services Order & Setup Form" in effect on the date of termination/commitment period of this AGREEMENT and any Services provided under any "Web Hosting Services Order & Setup Forms", unless otherwise mutually agreed to in writing.

**5.4 "Termination - Customer Shall Pay"**. Upon termination of this AGREEMENT, including any "Web Hosting Services Order & Setup Form" in effect, STRATEGICWEBS shall be paid for all "Web Hosting Services" through the date of termination /commitment period.

**5.4.1 "Termination - Commitment Periods"**. If any "Web Hosting Services Order & Setup Form" in effect on the date of termination covers a commitment period, STRATEGICWEBS shall be paid as follows:

**5.4.1.1 "Annual and Quarterly Commitments"**

**5.4.1.1.1 "Greater Than 50% of the commitment remains"**. STRATEGICWEBS shall be paid 50% of the original commitment amount.

**5.4.1.1.2 "Greater Than 25% and Less Than 51% of the commitment remains"**. STRATEGICWEBS shall be paid 25% of the original commitment amount.

**5.4.1.1.3 "Less Than 25% of the commitment remains"**. STRATEGICWEBS shall be paid 10% of the original commitment amount.

**5.4.1.2 "Monthly Commitments"**

**5.4.1.2.1** STRATEGICWEBS shall be paid 100% of the original Monthly Commitment amount.

**5.4.2 "Termination Invoice"**. STRATEGICWEBS shall advise CUSTOMER of the extent to which services have been provided through such date of termination/commitment period, including any outstanding Annual, Quarterly and Monthly Commitment charges. STRATEGICWEBS shall provide CUSTOMER with a "Termination Invoice" for such charges

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within thirty (30) days of the date of termination.

**5.4.3 "Final Payment"**. CUSTOMER shall pay STRATEGICWEBS their "Final Payment" within thirty (30) days of the date of the "Termination Invoice" for all Services provided through such date of termination/commitment period.

**5.5 "Termination - Survival"**. In the event of and upon termination of this AGREEMENT, all Articles herein shall survive termination of this Agreement and continue in effect.

## ARTICLE 6

### SUSPENSION OF SERVICES

**6.1 "Suspension of Service"**. CUSTOMER agrees that STRATEGICWEBS may suspend services to CUSTOMER without notice and without liability if:

STRATEGICWEBS reasonably believes that the services are being used in violation of this AGREEMENT, STRATEGICWEBS' Acceptable Use Policy (AUP) or Anti-Spam Policy (A-SP).

**6.1.1** CUSTOMER breaches any term of this agreement including but not limited to Article 9.

**6.1.2** CUSTOMER fails to cooperate with any reasonable investigation of any suspected violation of STRATEGICWEBS' policies

**6.1.3** STRATEGICWEBS reasonably believes that the suspension of service is necessary to protect its network or its other customers

**6.1.4** as requested by a law enforcement or regulatory agency

**6.2 "Suspending Service"**. STRATEGICWEBS may suspend your account by deactivating any access by CUSTOMER and/or by CUSTOMER's web users to any information contained on the STRATEGICWEBS' servers related to CUSTOMER's account while maintaining the information and data related to CUSTOMER's account upon the STRATEGICWEBS' servers. Suspension shall specifically include the disabling of CUSTOMER's hosted domain and/or any access to information or data related to CUSTOMER's account. In the event of any such suspension CUSTOMER will be notified. At the sole option of STRATEGICWEBS, CUSTOMER may be given an opportunity to correct such breach or violation. Upon being notified of an opportunity to correct such breach or violation, if such breach or violation is not corrected the account may be terminated under Article 8.2.

**6.3 "Service Charges"**. Service charges associated with any "Web Hosting Services Order & Setup Form" in effect will continue to accrue on suspended accounts as if they were not suspended. CUSTOMER will remain responsible for the payment of any such charges during any such period of suspension.

**6.4 "Reasonable Reinstatement Fee"**. CUSTOMER shall pay STRATEGICWEBS' reasonable reinstatement fee if Service is reinstated following a suspension of service under this Article.

## ARTICLE 7

### COMPENSATION

**7.1 "Compensation"**. In full consideration for the services to be provided by STRATEGICWEBS, CUSTOMER shall pay STRATEGICWEBS as specified in "Web Hosting Services Order & Setup Form".

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**7.1.1 "Current Prices / Fees for Services".** Current Prices / Fees for Services are specified in "Web Hosting Services Order & Setup Form" are located within the STRATEGICWEBS Website located at [www.StrategicWebs.com](http://www.StrategicWebs.com).

**7.1.2 "Fees for Services".** Fees for Services are payable in advance on the first day of each billing cycle.

**7.1.3 "CUSTOMER's Billing Cycle".** CUSTOMER's billing cycle shall be monthly, quarterly or annually as indicated on the "Web Hosting Services Order & Setup Form", beginning on the 1<sup>st</sup> day Billing Cycle following the "Service Commencement Date".

**7.1.4 "Fees for Services Due By".** Fees for Services are due by the 14th day following invoice date.

**7.1.5 "First Billing Cycle".** Unless otherwise agreed to by STRATEGICWEBS, STRATEGICWEBS requires payment for the first billing cycle before beginning service.

**7.1.6 "Credit/debit Card Billing, Customer Authorization".** If the "Web Hosting Services Order & Setup Form" provides for credit/debit card billing, CUSTOMER authorizes STRATEGICWEBS to bill subsequent fees to the credit/debit card on or after the first day of each successive billing cycle during the Term of this Agreement.

**7.1.7 "Increases in Fees for Services".** STRATEGICWEBS may increase its "Fees for Services" effective the first day of a Renewal Term by giving notice to CUSTOMER of the new fees at least thirty (30) days prior to the beginning of the Renewal Term, and if CUSTOMER does not give a notice of non-renewal as provided in Article 24.1.1, the CUSTOMER shall be deemed to have accepted the new fees for that Renewal Term and any subsequent Renewal Terms (unless the fees are increased in the same manner for a subsequent Renewal Term).

**7.1.8 "Disputed Fees for Services".** Fees not disputed within sixty (60) days of Invoice Date are conclusively deemed accurate.

**7.1.9 "Reinstatement Fee".** CUSTOMER agrees to pay STRATEGICWEBS reasonable reinstatement fee following a suspension of service for non-payment, and to pay STRATEGICWEBS' reasonable costs of collection of overdue amounts, including collection agency fees, attorney fees, and court costs.

**7.1.10 "Early Termination".** CUSTOMER acknowledges that the amount of the fee for the service provided is based on CUSTOMER's agreement to pay the fee for the entire Term as applicable. In the event STRATEGICWEBS terminates this AGREEMENT for CUSTOMER's breach of this AGREEMENT in accordance with Article 4 (Term and Termination), or CUSTOMER terminates this AGREEMENT other than in accordance with Article 4 (Term and Termination) for STRATEGICWEBS' breach, the unpaid fees for each billing cycle remaining in the Term, as applicable, are due pursuant to Article 4.

**7.1.11 "Subsequent Promotional Rates".** STRATEGICWEBS reserves the right to offer subsequent promotional rates which may or may not be more favorable than the Terms under which CUSTOMER entered this AGREEMENT or "Web Hosting Services Order & Setup Form". Any such periodic special rates shall not affect the then existing rights and responsibilities of CUSTOMER and/or STRATEGICWEBS.

## ARTICLE 8

### INVOICES

**8.1 "Invoices".** Each invoice will provide a breakdown of services provided and charges. All invoices shall be sent to the Accounts Payable Department at CUSTOMER's

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address indicated above or an updated address if so notified. The CUSTOMER shall be obligated to pay such Invoices, in full, within the Credit Terms established for CUSTOMER.

**8.1.1 "Invoice Schedules".** STRATEGICWEBS shall submit invoices to CUSTOMER in accordance with the following schedule:

**8.1.1.1 "Initial Services Invoice".** STRATEGICWEBS shall provide CUSTOMER with an Initial Invoice" for initial charges upon Commencement of Services.

**8.1.1.2 "Billing Cycle Invoice".** STRATEGICWEBS shall provide CUSTOMER with Billing Cycle Invoices as of the 1<sup>st</sup> day of each Billing Cycle.

**8.1.1.3 "Termination Invoice".** STRATEGICWEBS shall provide CUSTOMER with a "Termination Invoice" for final charges within thirty (30) days of the date of termination.

**8.1.2 "USPS Mail / Electronic Mail".** STRATEGICWEBS will invoice CUSTOMER via USPS Mail or Electronic Mail as selected on the "Web Hosting Services Order & Setup Form".

**8.1.3 "Invoice Delivered To".** STRATEGICWEBS will invoice CUSTOMER, addressed to the Primary Customer Contact listed on the "Web Hosting Services Order & Setup Form".

## ARTICLE 9

### PAYMENTS

**9.1 "Payments".** Payments must be made in United States dollars. It is recommended that in order to avoid any service interruption that CUSTOMER submit payment to STRATEGICWEBS in sufficient time to allow the payment to reach STRATEGICWEBS before the expiration of the Current Service Period.

**9.1.1 "Payments Accepted".** STRATEGICWEBS accepts payment by Credit Card (Visa and MasterCard), PayPal and by personal check, cashier's check, or money order. In addition, STRATEGICWEBS may from time to time allow additional forms of payment however the offering of a particular form of payment does not obligate STRATEGICWEBS to continue to offer that form of payment in the future.

**9.1.1.1 "Payments by Credit Card (Visa and MasterCard)".** CUSTOMER hereby consents and agrees to allow STRATEGICWEBS to charge CUSTOMER's provided credit card or bank account:

**9.1.1.1.1** As associated with any "Web Hosting Services Order & Setup Form" to activate CUSTOMER's account, register CUSTOMER's Domain Name, provide Web Hosting Services, etc.

**9.1.1.1.2** As associated with any reoccurring or subsequent Service Fees on or after the first day of each successive billing cycle during the TERM of this AGREEMENT.

**9.1.1.1.3** As associated with any other charges outlined herein as may be applicable.

CUSTOMER is responsible for providing and agrees to maintain current valid existing credit card or bank account information (such as credit card expiration, change in billing address, etc.) with STRATEGICWEBS for the purpose of satisfying STRATEGICWEBS' charges as they become due.

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Refusal or rejection of any such charge or any portion thereof is grounds for account suspension and/or termination at the sole option of STRATEGICWEBS under Article 4 herein. An administrative fee of \$25.00 may be charged for the refusal, rejection or return of any such charge for any reason whatsoever or any portion thereof.

**9.1.1.2 "Payments by PayPal".** Payments by PayPal must be submitted to Payments@StrategicWebs.com and be made prior to 3 days of the date due.

**9.1.1.3 "Payments by Check".** Payments by check must be made out to **StrategicWebs** and submitted to:

**StrategicWebs  
PO BOX 1257  
Canton, Texas 75103**

**9.1.2 "Returned Check".** If a CUSTOMER's check used to provide payment for "Fees for Services" should be returned and not paid by the bank on which it is drawn, for any reason (i.e. non-sufficient funds, missing signature, missing date, etc.), the following will apply:

**9.1.2.1 "Returned Check Fee".** A \$25.00 return check fee is assessed.

**9.1.2.2 "Account will be Suspended".** The CUSTOMER's account, including all Services will be suspended until the replacement payment has been received and has cleared the bank.

If the account remains suspended for sixty (60) days due to a Returned Check, STRATEGICWEBS reserves the right to Terminate this Agreement pursuant to Article 4.

**9.1.3 "Preferred Replacement Payment".** The preferred replacement payment for a returned check should be in the form of a cashier's check or money order. If the replacement payment is made with another personal check, the account will remain Suspended until the replacement check clears the bank.

**9.1.4 "Credit/Payment Terms".** Throughout the term of this AGREEMENT and from time to time, STRATEGICWEBS, at its sole discretion, reserves the right to adjust the amount of credit extended to the CUSTOMER under this AGREEMENT. Credit/Payment terms are subject to STRATEGICWEBS' approval. STRATEGICWEBS may change credit terms upon reasonable notice at any time when CUSTOMER's financial condition, previous payment record, or the nature of CUSTOMER's relationship with STRATEGICWEBS warrants.

**9.1.5 "Late Payments".** STRATEGICWEBS shall not be required to continue providing "Web Hosting Services" while payments remain overdue.

**9.1.5.1 "Suspend Service".** Should any sum due to STRATEGICWEBS remain unpaid after thirty (30) days from the date of invoice, STRATEGICWEBS may suspend service until the account is current.

**9.1.5.2 "Charge and Collect a Fee".** Should any sum due to STRATEGICWEBS remain unpaid after thirty (60) days from the date of invoice, STRATEGICWEBS has the right to charge and collect a fee on any unpaid past due amounts equal to the lesser of one and one-half percent (1½ %) per month or the maximum rate allowable under applicable law.

**9.1.5.3 "New Orders or Activate New Packages".** STRATEGICWEBS will not activate new orders or activate new packages for CUSTOMER who has an

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outstanding balance with STRATEGICWEBS. For a new order to be setup or a new package to be activated, you must have a balance of \$0.00, unless otherwise agreed to by STRATEGICWEBS in writing.

**9.1.5.4 "Terminate this Agreement".** Should any sum due to STRATEGICWEBS remain unpaid after sixty (60) days from the date of invoice, STRATEGICWEBS may terminate this Agreement pursuant to Article 5 and discontinue performance under any other agreement with CUSTOMER.

### ARTICLE 10 PRICE CHANGE

**10.1 "Price Change".** The amount you pay for hosting will never increase from the date of purchase. We reserve the right to change prices listed on StrategicWebs.com, and the right to increase the amount of resources given to plans at any time.

### ARTICLE 11 COUPONS

**11.1 "Coupons".** The Discounts and coupon codes are reserved for first-time accounts \*or first-time customers\* only and may not be used towards the purchase of a domain registration unless otherwise specified.

If you have signed up using a particular domain, you may not resign up for that domain using another coupon at a later date. Any account found in violation of these policies will be reviewed by our sales department and the appropriate invoices will be added to the account.

**11.2 "Coupon Abuse".** Coupon abuse will not be tolerated and may result in the suspension or termination of the account. Coupons or discounts are only valid towards the initial purchase, and do not affect the renewal or recurring price.

### ARTICLE 12 CUSTOMER INFORMATION

**12.1 "Maintain Valid CUSTOMER Information".** CUSTOMER agrees to provide and maintain at all times during the Term of this AGREEMENT, true and accurate account information on file with STRATEGICWEBS, specifically including CUSTOMER's Name, Primary Customer Contact, Address, eMail address, Telephone number, Billing information and any other account information requested at any time during the Account Sign-up process. CUSTOMER further agrees that the failure to provide or maintain such accurate information is a material breach of this agreement and subjects CUSTOMER's account to suspension and/or termination as set forth in Articles 5 and 6 herein.

**12.2 "Primary Customer Contract".** STRATEGICWEBS will rely on the instructions of the person listed as the Primary Customer Contact on the "Web Hosting Services Order & Setup Form" with regard to CUSTOMER's account until CUSTOMER has provided a written notice changing the Primary Customer Contract.

**12.3 "Information Usage".** CUSTOMER hereby consents and agrees that any information which STRATEGICWEBS may collect from CUSTOMER and/or maintain with respect to CUSTOMER, including but not limited to CUSTOMER's account information, dates of service, billing address, billing records, usage statistics, site statistics, services

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purchased, domain name purchases, correspondence to or from STRATEGICWEBS concerning CUSTOMER or CUSTOMER's account, or other information which in STRATEGICWEBS sole judgment is reasonable, STRATEGICWEBS may, without notice to CUSTOMER, disclose such information to public or private third parties as applicable law may require or permit.

The decision as to whether to report or disclose such information as may be required, permitted or otherwise reasonable shall be within the sole discretion of STRATEGICWEBS and may include but shall not be limited to:

**12.3.1** Reporting to the appropriate authorities any conduct by CUSTOMER or any of CUSTOMER's customers or end users that STRATEGICWEBS believes violates applicable law.

**12.3.2** Providing any information that it has about CUSTOMER or any of its customers or end users in response to a formal or informal request from a law enforcement or regulatory agency or in response to a formal request in a civil action that on its face meets the requirements for such a request.

**12.3.3** Compliance with a court order, subpoena or other request of any State or Federal government.

**12.3.4** Compliance with the Electronic Communications Decency Act

**12.3.5** Compliance with the Digital Millennium Copyright Act

**12.3.6** Compliance with the STRATEGICWEBS policies.

**12.4 "Request for CUSTOMER Information".** CUSTOMER agrees that STRATEGICWEBS may, without notice to CUSTOMER,

**12.5 "eMail Communications from STRATEGICWEBS".** During and after the term of this agreement, CUSTOMER agrees to receive periodic emails from STRATEGICWEBS in regards to CUSTOMER's account, system conditions, updates, maintenance schedules, and/or STRATEGICWEBS' products and services.

### ARTICLE 13

#### NEW ACCOUNT SETUP / TRANSFERS

**13.1 "New Account Setup".** STRATEGICWEBS will setup your account after we have received payment and we and/or our payment partner(s) have screened the order(s) in case of fraud. It is your responsibility to provide us with an email address which is not @ the domain(s) you are signing up under. If there is ever an abuse issue or we need to contact you, the primary email address on file will be used for this purpose. It is your responsibility to ensure the email address on file is current or up to date at all times. If you have a domain name registered with STRATEGICWEBS, it is your responsibility to ensure that the contact information for your domain account and your actual domain name(s) is correct and up-to-date. STRATEGICWEBS is not responsible for a lapsed registration due to outdated contact information being associated with the domain. If you need to verify or change this information, you should contact our sales team via email. Providing false contact information of any kind may result in the termination of your account.

**13.2 "Transfers".** STRATEGICWEBS will setup make every effort to help you move your site to us. However, transfers are provided as a courtesy service, and we cannot make guarantees regarding the availability, possibility, or time required to complete an account

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transfer. Each hosting company is configured differently, and some hosting platforms save data in an incompatible or proprietary format, which may make it extremely difficult if not impossible to migrate some or all account data. We will try our best, but in some cases we may be unable to assist you in a transfer of data from an old host. The free transfer services are available for 30 days from your sign up date. Transfers outside of the 30 day free period will incur a charge; please contact a member of the transfers department with specific details to receive a price quote

### ARTICLE 14

#### ACCEPTABLE USE POLICY (AUP)

**14.1 "Acceptable Use Policy (AUP)".** STRATEGICWEBS strictly enforces and CUSTOMER agrees to use STRATEGICWEBS' Services in compliance with STRATEGICWEBS' Acceptable Use Policy (AUP), which is hereby incorporated by reference in this AGREEMENT and can be found on STRATEGICWEBS' website at [www.StrategicWebs.com](http://www.StrategicWebs.com). The terms of STRATEGICWEBS' Acceptable Use Policy are incorporated into this AGREEMENT as though they were fully set forth at length herein.

**14.1.1 "Maintain Website in Full Compliance".** CUSTOMER agrees to maintain CUSTOMER's website in full compliance with the Terms of STRATEGICWEBS' Acceptable Use Policy. CUSTOMER's failure to so comply is cause for immediate suspension and/or termination without refund under Articles 5 and 6 herein. STRATEGICEBS reserves the right to refuse to provide Service to anyone at their sole option.

**14.1.2 "Amendments to AUP".** CUSTOMER agrees that STRATEGICWEBS may, in its reasonable commercial judgment consistent with industry standards, amend the AUP from time to time to further detail or describe reasonable restrictions and conditions on CUSTOMER's use of the Services. Amendments to the AUP are effective on the earlier of STRATEGICWEBS' notice to CUSTOMER that an amendment has been made, or the first day of any Renewal Term that begins subsequent to the amendment.

**14.1.3 "Cooperate with Reasonable Investigation".** CUSTOMER agrees to cooperate with STRATEGICWEBS' reasonable investigation of any suspected violation of the AUP. In the event of a dispute between STRATEGICWEBS and CUSTOMER regarding the interpretation of the AUP, STRATEGICWEBS' commercially reasonable interpretation of the AUP shall govern.

### ARTICLE 15

#### ANTI-SPAM POLICY (A-SP)

**15.1 "Anti-Spam Policy (A-SP)".** STRATEGICWEBS strictly enforces and CUSTOMER agrees to use STRATEGICWEBS' Services in compliance with STRATEGICWEBS' Anti-Spam Policy (A-SP), which is hereby incorporated by reference in this AGREEMENT and can be found on STRATEGICWEBS' website at [www.StrategicWebs.com](http://www.StrategicWebs.com). The terms of STRATEGICWEBS' Anti-Spam Policy are incorporated into this AGREEMENT as though they were fully set forth at length herein.

**15.1.1 "Maintain eMail Usage in Full Compliance".** CUSTOMER agrees to maintain CUSTOMER's eMail Usage in full compliance with the Terms of STRATEGICWEBS' Anti-Spam Policy. CUSTOMER's failure to so comply is cause for immediate suspension and/or termination without refund under Articles 5 and 6 herein. STRATEGICEBS reserves the right to refuse to provide Service to anyone at their sole option.

**15.1.2 "Amendments to A-SP".** CUSTOMER agrees that STRATEGICWEBS may, in its

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reasonable commercial judgment consistent with industry standards, amend the A-SP from time to time to further detail or describe reasonable restrictions and conditions on CUSTOMER's use of the Services. Amendments to the A-SP are effective on the earlier of STRATEGICWEBS' notice to CUSTOMER that an amendment has been made, or the first day of any Renewal Term that begins subsequent to the amendment.

**15.1.3 "Cooperate with Reasonable Investigation".** CUSTOMER agrees to cooperate with STRATEGICWEBS' reasonable investigation of any suspected violation of the A-SP. In the event of a dispute between STRATEGICWEBS and CUSTOMER regarding the interpretation of the A-SP, STRATEGICWEBS' commercially reasonable interpretation of the A-SP shall govern.

## ARTICLE 16

### 100% SATISFACTION / 30-DAY RISK-FREE GUARANTEE

**16.1 "100% Satisfaction / 30-Day Risk Free Guarantee".** Try STRATEGICWEBS' hosting services risk-free for 30-days with confidence. If you are not 100% satisfied with our hosting services, you can request a refund for any reason within the initial 30 days of the Service Commencement Date and STRATEGICWEBS will deactivate CUSTOMER's service and refund the hosting charges, excluding any domain registrations.

**16.1.1** This policy does not apply to Domain Registration fees. Domain Registration fees cannot be canceled and are non-refundable. However, CUSTOMER can transfer their domain name to CUSTOMER's new hosting provider and STRATEGICWEBS will help CUSTOMER make a smooth transfer to CUSTOMER's new hosting provider.

**16.1.2** Only first-time accounts are eligible for a refund. For example, if you've had an account with us before, canceled and signed up again, you will not be eligible for a refund or if you have opened a second account with us.

**16.1.3** Accounts suspended, canceled, or terminated by STRATEGICWEBS for violating STRATEGICWEBS' "Web Hosting Service Agreement" or "Anti-Spam Policy" do not qualify for the 100% satisfaction / 30-Day Risk Free Guarantee. For example, if an account is canceled due to spamming or another violation, no refund will be issued.

**16.1.4** To receive CUSTOMER's 30-Day Risk Free Guarantee refund, CUSTOMER must notify STRATEGICWEBS via email (RiskFree@StrategicWebs.com) and let STRATEGICWEBS know why CUSTOMER was not satisfied. Additionally, CUSTOMER must have at least one technical support trouble ticket in STRATEGICWEBS' support center documenting the problem and allow STRATEGICWEBS the opportunity to correct the problem in a timely manner.

## ARTICLE 17

### WEB HOSTING SERVICES

**17.1 "Services Available".** Subject to the terms of this Agreement as set forth herein, and contingent on CUSTOMER's satisfaction of STRATEGICWEBS' credit approval requirements, STRATEGICWEBS agrees to provide the web hosting services described and selected by CUSTOMER in the "Web Hosting Services Order & Setup Form" for the fees stated in the "Web Hosting Services Order & Setup Form".

**17.2 "Equivalent or Otherwise Equal Services".** STRATEGICWEBS reserves the right to change, amend and/or otherwise alter the "Web Hosting Services" provided with equivalent or otherwise equal services without prior notice to CUSTOMER. The specifics of

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any particular offer are contained within the offer itself as published on the STRATEGICWEBS website at the time the CUSTOMER creates the account with STRATEGICWEBS and will remain in effect throughout the "Term of CUSTOMER's Agreement". The specifics of all current offers are located within the STRATEGICWEBS Website located at [www.StrategicWebs.com](http://www.StrategicWebs.com).

**17.3 "Change in "Web Hosting Services" Charges".** STRATEGICWEBS reserves the right to change, amend and/or otherwise alter the charges associated with "Web Hosting Services" provided a written notification is provided to CUSTOMER by STRATEGICWEBS 30 Days prior to the end of the current "Term of CUSTOMER Agreement". The specifics of all current pricing are located within the STRATEGICWEBS Website located at [www.StrategicWebs.com](http://www.StrategicWebs.com).

## ARTICLE 15

### DOMAIN REGISTRATION SERVICES

**18.1 "Domain Registration".** STRATEGICWEBS is an authorized reseller and registers Domain Names on behalf of STRATEGICWEBS' CUSTOMERs. CUSTOMER's purchase of domain name registration services is specifically subject to CUSTOMER's agreement to the terms of this AGREEMENT and also the DOMAIN REGISTRATION AGREEMENT which is incorporated fully into this agreement.

**18.2 "Domain Ownership".** STRATEGICWEBS will not own or otherwise control any domain name registered on CUSTOMER's behalf under this paragraph. STRATEGICWEBS provides this service as a convenience to CUSTOMER only and CUSTOMER hereby waive any and all claims which CUSTOMER may have, or which may later arise, against STRATEGICWEBS for any and all damages, losses, claims or expenses arising out of or related to the acquisition, registration and/or use of the Domain Name. CUSTOMER hereby agrees to pay any costs incurred by STRATEGICWEBS to register and/or maintain the Domain Name on CUSTOMER's behalf by STRATEGICWEBS under the payment provisions of this AGREEMENT elsewhere herein.

**18.3 "Third Party License".** Any CUSTOMER that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.

## ARTICLE 19

### SECURITY

**19.1 "Internet Security".** CUSTOMER hereby understands and agrees that by its nature, the Internet is not secure. CUSTOMER accepts responsibility for and understands that any eMail that CUSTOMER sends can be stored and/or backed-up on any server in which the eMail was routed through, all of which is outside the control of STRATEGICWEBS.

**19.2 "Usernames and Passwords".** CUSTOMER agrees to be responsible for: (i) maintaining the confidentiality of CUSTOMER's usernames and passwords, (ii) any and all transactions by persons that CUSTOMER gives access to or that otherwise use such

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usernames or passwords, and (iii) any and all consequences of use or misuse of CUSTOMER's usernames and passwords.

**19.3 "Officers, Employees, Agents, Representatives and Others".** CUSTOMER agrees that all officers, employees, agents, representatives and others having access to CUSTOMER's usernames and/or passwords shall be authorized by CUSTOMER to use the Services. CUSTOMER shall be responsible for all actions by current and former officers, employees, agents, representatives and others, regardless of whether authorized by CUSTOMER, that access the Service using CUSTOMER's usernames and passwords.

**19.4 "Notify STRATEGICWEBS".** CUSTOMER agrees to notify STRATEGICWEBS immediately of any unauthorized use of CUSTOMER's usernames or passwords or any other breach of security regarding the Services of which CUSTOMER has knowledge.

## ARTICLE 20

### RESELLING ACCOUNTS OR SERVICES

**20.1 "Reselling Accounts or Services".** CUSTOMER agrees to not resell their account or STRATEGICWEBS' services.

## ARTICLE 21

### DATA LOSS, BACKUPS, AND BACKUP COPIES

**21.1 "Data Loss".** CUSTOMER agrees that their use of STRATEGICWEBS' services and the use of this web hosting service are at their own risk. STRATEGICWEBS is not responsible for files and/or data residing on your account. You agree to take full responsibility for files and data transferred to STRATEGICWEBS servers.

**21.2 "Backups / Backup Copies".** CUSTOMER understands the need and agrees to maintain a current copy of all content (files and data) hosted by STRATEGICWEBS notwithstanding any documented agreement by STRATEGICWEBS to provide backup services.

**21.3 "Backup Limits".** Any account using more than 20 gigs of disk space will be removed from our off site weekly backup with the exception of Databases continuing to be backed up.

**21.4 "Courtesy System Backups".** Our backup service is ran on Tuesday of each week, overwrites any of our previous backups made, and only one week of backups are kept. This service is provided to you as a courtesy and no guarantees of recovery are implied.

## ARTICLE 22

### NETWORK CHANGES

**22.1 "Equipment / Network Changes".** Upgrades and other changes in STRATEGICWEBS' equipment, network, including but not limited to changes in its software, hardware, and service providers, may affect the display or operation of CUSTOMER's hosted content and/or applications. STRATEGICWEBS reserves the right to change its equipment and/or network in its commercially reasonable discretion, and STRATEGICWEBS shall not be liable for any resulting harm to CUSTOMER.

## ARTICLE 23

### RESOURCE USAGE

**23.1** CUSTOMER may not:

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**23.1.1** Use 25% or more of system resources for longer than 90 seconds. There are numerous activities that could cause such problems; these include: CGI scripts, FTP, PHP, HTTP, etc.

**23.1.2** Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD.

**23.1.3** Run any type of web spider or indexer (including Google Cash / AdSpy) on shared servers.

**23.1.4** Run any software that interfaces with an IRC (Internet Relay Chat) network.

**23.1.5** Run any bit torrent application, tracker, or client. You may link to legal torrents off-site, but may not host or store them on our shared servers.

**23.1.6** Participate in any file-sharing/peer-to-peer activities.

**23.1.7** Run any gaming servers such as counter-strike, half-life, battlefield1942, etc.

**23.1.8** Run cron entries with intervals of less than 15 minutes.

**23.1.9** Run any MySQL queries longer than 15 seconds. MySQL tables should be indexed appropriately.

**23.1.10** When using PHP include functions for including a local file, include the local file rather than the URL. Instead of `include("http://yourdomain.com/include.php")` use `include("include.php")`.

**23.1.11** To help reduce usage, do not force html to handle server-side code (like php and shtml).

**23.1.12** Only use https protocol when necessary; encrypting and decrypting communications is noticeably more CPU-intensive than unencrypted communications.

**23.2 "Bandwidth Usage".** You are allocated a monthly bandwidth allowance. This allowance varies depending on the hosting package you purchase. Should your account pass the allocated amount we reserve the right to suspend the account until the start of the next allocation, suspend the account until more bandwidth is purchased at an additional fee, suspend the account until you upgrade to a higher level of package, terminate the account and/or charge you an additional fee for the overages. Unused transfer in one month cannot be carried over to the next month.

## ARTICLE 24 NOTICE/NOTICES

**24.1 "Notice/Notices".** Any notice/notices to be given hereunder regarding this AGREEMENT by either party to the other may be effected either by:

**24.1.1 "By USPA Mail".** By USPS mail, registered or certified, postage prepaid with return receipt requested. Mailed notices will be deemed communicated as of three (3) business days after mailing.

To notify STRATEGICWEBS, notice should be addressed as follows:

**StrategicWebs  
PO BOX 1257  
Canton, Texas 75103**

To notify CUSTOMER, notice will be addressed to CUSTOMER's business address provided within the "Web Hosting Services Order & Setup Forms" unless updated by CUSTOMER. Notice to CUSTOMER at this address is deemed sufficient regardless of

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CUSTOMER's receipt of such mail. If CUSTOMER wishes to update CUSTOMER's business address, CUSTOMER should do so by contacting STRATEGICWEBS' Customer Service via the STRATEGICWEBS website located at <http://www.StrategicWebs.com>.

**24.1.2 "By eMail".** By eMail, addressed to [Ron@StrategicWebs.com](mailto:Ron@StrategicWebs.com) to notify STRATEGICWEBS or addressed to CUSTOMER's eMail address provided within the "Web Hosting Services Order & Setup Forms" unless updated by CUSTOMER. Notice to CUSTOMER at this address is deemed sufficient regardless of CUSTOMER's receipt of such eMail. If CUSTOMER wishes to update CUSTOMER's eMail address, CUSTOMER should do so by contacting STRATEGICWEBS' Customer Service via the STRATEGICWEBS website located at <http://www.StrategicWebs.net>. eMailed notices will be deemed communicated as of one (1) business day after eMailing.

## 25 ARTICLE 25 LIMITATIONS

**25.1 "Disclaimer".** STRATEGICWEBS SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES YOUR BUSINESS MAY SUFFER. STRATEGICWEBS DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT FOR CLAIMS ARISING FROM ACTS OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, STRATEGICWEBS SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES, OR FOR ACTS OF NEGLIGENCE THAT ARE NOT INTENTIONAL OR RECKLESS IN NATURE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL STRATEGICWEBS OR ITS AFFILIATES, SUBCONTRACTORS AND SUPPLIERS BE LIABLE FOR DAMAGES FOR LOSS OF DATA, SOFTWARE RESTORATION, SUBSTITUTION OF PRODUCTS OR SERVICES, OR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING DOWNTIME COSTS OR LOST PROFITS.

STRATEGICWEBS MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

IN NO EVENT SHALL STRATEGICWEBS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES TO CUSTOMER OR ANY OTHER PARTY AS A RESULT OF THE PERFORMANCE OR NON-PERFORMANCE BY STRATEGICWEBS, ITS PERSONNEL OR CONTRACTORS OF ANY SERVICES DESCRIBED HEREIN, (INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, PROFITS, OR USE OF SOFTWARE) WHETHER FORESEEABLE OR NOT, EVEN IF STRATEGICWEBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. STRATEGICWEBS LIABILITY WITH RESPECT TO, ARISING FROM, OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, IS LIMITED TO AMOUNTS PAID BY CUSTOMER TO STRATEGICWEBS, EXCLUDING EXPENSES, TRAVEL AND PER DIEM EXPENSES, PURSUANT TO THE TERMS HEREOF.

**25.2 "Indemnify".** CUSTOMER agrees that it shall defend, indemnify, save and hold STRATEGICWEBS harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against STRATEGICWEBS, its agents, its

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customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns.

CUSTOMER agrees to defend, indemnify and hold harmless STRATEGICWEBS against liabilities arising out of;

**25.2.1** any injury to person or property caused by any products sold or otherwise distributed in connection with STRATEGICWEBS;

**25.2.2** any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party;

**25.2.3** any copyright infringement;

**25.2.4** any defective products sold to customers from STRATEGICWEBS' servers;

**25.2.5** any action brought by the other party or a third party under any theory of legal liability arising out of or related to the actual or alleged use of CUSTOMER's services in violation of applicable law or the AUP by CUSTOMER or any person using CUSTOMER's log on information, regardless of whether such person has been authorized to use the services by CUSTOMER.

**25.2.6** Any action caused solely by CUSTOMER's gross negligence or willful acts or omissions.

If either party or any of its affiliates is ever liable to the other for one or more breaches, disputes, controversies or claims arising under or in connection with the relationship created hereby, the cumulative amount of all damages, costs, expenses and penalties, if recoverable, shall not exceed the total amount paid, received or owed under this AGREEMENT and the recovery of such amount is the prevailing party's sole and exclusive remedy hereunder. In no event shall either party be liable to the other for special, indirect, incidental, consequential or punitive damages. No claim may be asserted by either party hereto against the other party with respect to any event, act or omission that occurred more than two (2) years prior to such claim being asserted.

CUSTOMER agrees that upon the assignment of CUSTOMER's User ID and Password that CUSTOMER will maintain the confidentiality of CUSTOMER's account information and assume all responsibility of and from any loss, theft or other destruction of any data as the result of any access to CUSTOMER's account via the use of CUSTOMER's User ID.

CUSTOMER further agrees to defend and indemnify and hold harmless STRATEGICWEBS of and from any and all third party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorneys fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred (whether paid or not) as the result of any claim for damages in any way related to the disclosure of CUSTOMER's confidential User ID and Password information. Choice of counsel remains exclusively that of STRATEGICWEBS.

**25.3 "Considered in Default or Liable"**. Neither party shall be considered in default or liable for or held responsible for any hindrance, delay or failure in performance hereunder caused in whole or in part by any circumstance beyond its reasonable control, including without limitation, lighting strikes, fires, floods, unusually severe weather conditions, embargoes, labor disputes, court order, acts of terrorism or sabotage, war, quarantine restrictions, insurrection, riots, accidents, delays of carriers or suppliers, loss of supply or market, equipment failures, voluntary or mandatory compliance with any governmental act, regulation or request, acts of God or by public enemy, network outages, transportation

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delays, or delays associated with the delivery, implementation or performance of third parties or vendors not under the direct or indirect control of the non-performing party, provided the non-performing party uses reasonable efforts to avoid or remove such causes of non-performance and continues performance hereunder with reasonable dispatch when such causes are removed.

**25.4 "Total Liability".** To the extent STRATEGICWEBS is held legally liable to CUSTOMER, CUSTOMER agrees that STRATEGICWEBS' liability hereunder for damages, regardless of the form of action, shall be limited to the amounts paid to STRATEGICWEBS by CUSTOMER under this AGREEMENT.

**25.5 "Force Majeure".** STRATEGICWEBS shall not be in default of any obligation under the Agreement or liable to CUSTOMER for any failure or delay caused by events beyond STRATEGICWEBS' control, including, without limitation, significant failure of a portion of the power grid, significant failure of the Internet, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, natural disaster, accidents, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry.

## ARTICLE 26 WARRANTIES

**26.1 "Commercial Practices and Standards".** STRATEGICWEBS shall provide Services in accordance with generally recognized commercial practices and standards.

**26.2 "Disclaimer of Warranties".** STRATEGICWEBS DOES NOT WARRANT OR REPRESENT THAT THE SERVICES PROVIDED WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. TO THE EXTENT PERMITTED BY APPLICABLE LAW.

**26.3 "Exclusive".** THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. STRATEGICWEBS SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS. STRATEGICWEBS DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## ARTICLE 27 CONFIDENTIALITY

**27.1 "Confidentiality - STRATEGICWEBS".** STRATEGICWEBS shall maintain in strict confidence, and shall use and disclose only as authorized by CUSTOMER, all information of a competitively sensitive or proprietary nature that it receives in connection with the Services provided for CUSTOMER pursuant to this AGREEMENT and/or any "Web Hosting Services Order & Setup Forms". STRATEGICWEBS shall require its personnel to agree to do likewise. CUSTOMER shall take reasonable steps to identify for the benefit of STRATEGICWEBS and its personnel any information of a competitively sensitive or proprietary nature, including by using confidentiality notices in written material where appropriate.

These restrictions shall not be construed to apply to (i) information generally available to the public; (ii) information released by CUSTOMER generally without restriction; (iii) information independently developed or acquired by STRATEGICWEBS or its personnel

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without reliance in any way on other protected information of CUSTOMER; or (iv) information approved for the use and disclosure of STRATEGICWEBS or its personnel without restriction.

STRATEGICWEBS may disclose any subscriber information to law enforcement agencies without further consent or notification to the subscriber upon lawful request from such agencies. We will cooperate fully with law enforcement agencies.

Notwithstanding the foregoing restrictions, STRATEGICWEBS and its personnel may use and disclose any information as necessary for it or them to protect their interest in this AGREEMENT, but only after CUSTOMER has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

**27.2 "Confidentiality - CUSTOMER".** CUSTOMER shall maintain in strict confidence, and shall use and disclose only as authorized by STRATEGICWEBS, all information of a competitively sensitive or proprietary nature that it receives in connection with the Services being provided for the CUSTOMER by the STRATEGICWEBS pursuant to this AGREEMENT and/or any "Web Hosting Services Order & Setup Forms". CUSTOMER shall require its personnel to agree to do likewise. STRATEGICWEBS shall take reasonable steps to identify for the benefit of CUSTOMER and its personnel any information of a competitively sensitive or proprietary nature, including by using confidentiality notices in written material where appropriate.

These restrictions shall not be construed to apply to (i) information generally available to the public; (ii) information released by STRATEGICWEBS generally without restriction; (iii) information independently developed or acquired by CUSTOMER or its personnel without reliance in any way on other protected information of STRATEGICWEBS; or (iv) information approved for the use and disclosure of CUSTOMER or its personnel without restriction.

Notwithstanding the foregoing restrictions, CUSTOMER and its personnel may use and disclose any information (i) to the extent required by an order of any court or other governmental authority or (ii) as necessary for it or them to protect their interest in this AGREEMENT, but in each case only after STRATEGICWEBS has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

**27.3 "Residual Rights of Personnel".** Notwithstanding anything to the contrary herein, STRATEGICWEBS and its personnel shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any confidential or proprietary information of CUSTOMER.

## ARTICLE 28

### GENERAL PROVISIONS

**28.1 "Governing/Applicable Law".** This AGREEMENT is made under and shall be governed by and construed in accordance with the laws of the State of Texas (without regard to any choice of law's provisions thereof). Any dispute arising from this AGREEMENT or relating directly or indirectly to the relationship between the parties which cannot be

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resolved amicably within thirty (30) days shall be resolved by binding arbitration, before a single arbitrator in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association ("AAA"), and judgment on the award may be entered in any court of competent jurisdiction.

Discovery may be had according to the Federal Rules of Civil Procedure. The arbitrator shall have authority to award equitable and legal relief, but shall have no authority or jurisdiction to award consequential, special, incidental or punitive damages. The fees and expenses of the AAA shall be borne equally by the parties but may be awarded, together with reasonable attorneys' fees and expenses, to the prevailing party (if any) in the informed discretion of the arbitrator. Notwithstanding anything contained herein to the contrary, either party may seek to obtain injunctive or other equitable relief at any time from a federal or state court.

*The location of such arbitration and location of courts for entry of judgment and requests for injunctive or equitable relief shall be in the State of Texas and in the city or county of the STRATEGICWEBS' principal office.*

**28.2 "Partial Invalidity/Severability".** If any Term or Provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, illegal or unenforceable, the validity or enforceability of the remainder of this AGREEMENT shall continue in full force without being impaired or invalidated in any way.

**28.3 "Standard Commercial/Retail Products".** This AGREEMENT does not cover standard Commercial/Retail hardware and software products sold or licensed to CUSTOMER. Any such transactions shall be governed by the Terms and Conditions of the Manufacturer's Warranties.

**28.4 "Content Submitted to Contests".** Any text, files, images, photos, videos, or other materials (collectively, "Content") that CUSTOMER submits to STRATEGICWEBS in the event of a public contest ("Contest"), fall under the ownership rights of STRATEGICWEBS. By submitting any Content on or through a Contest, you hereby grant to STRATEGICWEBS a license to use, modify, publicly display, reproduce, and distribute such Content solely on and through STRATEGICWEBS services. This license applies only to Content submitted to a Contest held by STRATEGICWEBS. Without this license, STRATEGICWEBS would be unable to, for example, modify an image to satisfy technical requirements. STRATEGICWEBS does not claim any ownership rights on Content that you store on your website, this only applies to contests.

### **28.5 "Health and Safety".**

**28.5.1** STRATEGICWEBS and any of its subcontractors shall, when at the CUSTOMER's site, conduct their activities so that their equipment, working conditions and methods are safe and without risk to health for their own and CUSTOMER'S employees as well as for any other users of the CUSTOMER's site.

**28.5.2** CUSTOMER and any of its subcontractors shall, maintain CUSTOMER's site and conduct their activities so that their equipment, working conditions and methods are safe and without risk to health for their own and STRATEGICWEBS' employees, any of its subcontractors and as well as for any other users of the CUSTOMER's site.

**28.6 "Extraneous Circumstances".** Neither party shall be liable for performance delays or for non-performance due to causes beyond its reasonable control.

**28.7 "Precedence".** In the event of conflict between the provisions of this AGREEMENT and any attached exhibit, the provisions of this AGREEMENT shall to the extent of such conflict take precedence.

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## TERMS of SERVICE AGREEMENT

**28.8 "Exhibits".** The following documents are attached hereto as exhibits, the terms of which are incorporated by reference in their entirety:

- 28.8.1** "Master Consulting Services Agreement"
- 28.8.2** "Acceptable Use Policy (AUP)"
- 28.8.3** "Anti-Spam Policy (A-SP)"
- 28.8.4** "Domain Registration"
- 28.8.5** "Web Hosting Services Order & Setup Forms"

**28.9 "No Joint Venture".** Nothing contained in this AGREEMENT shall be construed as creating a joint venture, partnership or employment relationship between the parties hereto, nor shall either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.

**28.10 "Waiver".** Neither party's failure to exercise any of its rights under this AGREEMENT shall constitute or be deemed a waiver or forfeiture of those rights.

**28.11 "No Discrimination".** Both parties agree that in the performance of this AGREEMENT neither party will discriminate or permit within their control, discrimination against any person or group of persons on the grounds of sex, race, color, religion, or natural origin in any manner prohibited by the laws of the United States.

**28.12 "Insurance".** To the extent that STRATEGICWEBS' personnel may perform work at CUSTOMER's premises, CUSTOMER shall maintain comprehensive general liability insurance, including broad form property damage coverage, with limits of at least \$100,000 combined single limit for personal injury and property damage for each occurrence.

**28.13 "Parties in Interest".** This AGREEMENT is enforceable only by STRATEGICWEBS and CUSTOMER. The terms of this AGREEMENT are not a contract or assurance regarding compensation, continued employment, or benefit of any kind to any of STRATEGICWEBS' personnel assigned to CUSTOMER's Services, or any beneficiary of any such personnel, and no such personnel, or any beneficiary thereof, shall be a third-party beneficiary under or pursuant to the terms of this AGREEMENT.

There are no third party beneficiaries to the AGREEMENT. Neither insurers nor the customers of resellers are third party beneficiaries to the AGREEMENT.

CUSTOMER may not transfer the AGREEMENT without STRATEGICWEBS' prior written consent. STRATEGICWEBS' approval for assignment is contingent on the assignee meeting STRATEGICWEBS' credit approval criteria. STRATEGICWEBS' may assign the AGREEMENT in whole or in part.

**28.14 "Successors".** This AGREEMENT shall inure to the benefit of, and be binding upon, STRATEGICWEBS and CUSTOMER, their successors and assigns.

**28.15 "Waived / Excused".** No term or provision of this AGREEMENT shall be deemed waived, amended or modified by either party, or no breach excused by either party, unless the waiver or consent shall be in writing signed by the party granting such waiver or consent. Waiver by either party of any default by any other party shall not be deemed a waiver of any other default. In the event that any one or more of the terms or provisions contained in this AGREEMENT shall for any reason be held to be unenforceable in any respect, such unenforceability shall not affect any other provision of this AGREEMENT, but this AGREEMENT shall then be construed as if such unenforceable provisions had never been contained herein.

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**ARTICLE 29**

**REMEDIES**

**29.1 "Exclusive".** The remedies in this AGREEMENT are CUSTOMER'S sole and exclusive remedies.

**ARTICLE 30**

**ACCEPTANCE OF AGREEMENT**

This "TERMS of SERVICE" AGREEMENT (hereinafter referred to as "AGREEMENT"), is made and entered into on the "DATE" CUSTOMER begins the use of services from StrategicWebs, LLC [hereafter referred to as "STRATEGICWEBS"] and hereunder shall constitute acceptance by CUSTOMER of this AGREEMENT and all of its terms and conditions.

This AGREEMENT establishes the mutually agreeable terms and conditions under which STRATEGICWEBS shall provide Website Design and/or Hosting Services to CUSTOMER.

CUSTOMER may have other agreements in effect with STRATEGICWEBS. Where the "Terms and Conditions" between the other agreements and this AGREEMENT over-lap; the "Terms and Conditions" of this AGREEMENT supersede and replace any over-lapping "Terms and Conditions" of any other AGREEMENT.

STRATEGICWEBS reserves the right to revise its "Terms and Conditions" contained in this AGREEMENT and any other policies at any time without notice. The "Terms and Conditions" contained herein supersede and replace any other agreement not referenced with-in this AGREEMENT or negotiation between CUSTOMER and STRATEGICWEBS whether oral, written or otherwise including any statements made by any representative of STRATEGICWEBS at any time unless specifically accepted in writing by STRATEGICWEBS.

No additional terms and conditions stated by CUSTOMER in acknowledging or otherwise accepting this AGREEMENT shall be binding upon STRATEGICWEBS unless specifically accepted in writing by STRATEGICWEBS.

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