



Terms & Conditions

Last Revised: March 29, 2016

The use of services provided by Zap5 Networks and its subsidiaries, divisions, and network (hereafter referred to as "Zap5 Networks") is subject to the following Terms and Conditions.

Party Definitions and Introductory Terms - The operative parties referred to in this Agreement are defined as follows:

1. Zap5 Networks is the publisher and operator of www.zap5.net (the "Site") whereby Zap5 Networks makes certain web hosting services (the "Services") available. For purposes of this Agreement, when "Site" or "Services" are referenced, such reference includes all hardware, software, and network resources necessary to provide said Site and/or Service.

When first-person pronouns are used in this Agreement, (Us, We, Our, Ours, etc.) these provisions are referring to Zap5 Networks. Additionally, when the terms "the Site" or "Site" are used, these terms refer to any site published by Us, unless a site is specifically exempt from this policy.

2. **You, the Client** - As Our Client and the user of the Site or Services, this Agreement will refer to You through any second-person pronouns, such as "Your," "Yours," etc.

PLEASE READ THE FOLLOWING HOSTING SERVICES TERMS AND CONDITIONS. BY SUBSCRIBING TO ZAP5 NETWORKS' SERVICES, YOU AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT (the "AGREEMENT"). IF YOU AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK "I ACCEPT," (OR SIMILAR SYNTAX) OR CHECK THE APPROPRIATE BOX MANIFESTING YOUR INTENT TO BE BOUND BY THESE TERMS AND CONDITIONS AND CONTINUE WITH THE ACCOUNT SET-UP PROCESS. YOU SHOULD PRINT-OUT OR OTHERWISE SAVE A COPY OF THIS AGREEMENT FOR FUTURE REFERENCE. IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK THE "BACK" BUTTON ON YOUR BROWSER AND DO NOT SUBSCRIBE TO ZAP5 NETWORKS' SERVICES. ZAP5 NETWORKS AGREES TO PROVIDE SERVICES TO YOU ONLY IF YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN. YOUR ELECTRONIC ACCEPTANCE OF THIS AGREEMENT IS PERMITTED BY THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (E-SIGN ACT) AND SIMILAR FEDERAL AND STATE LAWS. ANY USE OF ZAP5 NETWORKS' SERVICES SHALL CONSTITUTE AN ACT OF ACCEPTANCE OF THE CURRENT HOSTING SERVICES TERMS AND CONDITIONS.

Incorporations by reference.

Although this Agreement represents the primary terms and conditions of service for Zap5 Networks' Services, additional guidelines and rules are hereby incorporated by reference. The documents which can be found on Our Site, and which are specifically incorporated by reference, and are therefore part and parcel of this Agreement are the following:

Our Privacy Policy (<http://www.zap5.net/legal/>)

Our Acceptable Use Policy (<http://www.zap5.net/legal/>)

1. SERVICES

1.1 At the time of initial registration, You will select from the list of available Services the service plan(s) to which You wish to subscribe. All subscriptions to Services are subject to formal acceptance by Zap5 Networks. Your subscription to the Services will be deemed accepted by Zap5 Networks when Zap5 Networks delivers a confirmation of the subscription to You. Zap5 Networks reserves the right to refuse to provide You with any Service for any reason. Notwithstanding Our Uptime Guarantee found in Section 17 of this Agreement, Zap5 Networks also reserves the right to interrupt access to the Services to perform regular and emergency maintenance as needed. You may order additional Services at any time, provided that You agree to pay the then-current fees for such additional Services. All additional Services shall be considered "Services" hereunder. All Services provided are subject to availability and to all of the terms and conditions of this Agreement.

2. REVISIONS TO USER AGREEMENT

This Agreement contains the complete and entire terms and conditions that apply to Your use of Zap5 Networks' Services (as defined below). Zap5 Networks may modify the terms of this Agreement, including the Fees (as defined below) at any time.

2.1 From time to time, We may revise this Agreement. We reserve the right to do so, and You agree that We have this unilateral right. You agree that all modifications or changes to this Agreement are in force and enforceable immediately upon posting. The updated or edited version supersedes any prior versions immediately upon posting, and the prior version is of no continuing legal effect unless the revised version specifically refers to the prior version and keeps the prior version or portions thereof in effect. To the extent any amendment of this Agreement is deemed ineffective or invalid by any court, the parties intend that the prior, effective version of this Agreement be considered valid and enforceable to the fullest extent.

2.2 We agree that if We change anything in this Agreement, We will change the "last modified date" at the top of this Agreement. You agree to periodically re-visit this web page, and to use the "refresh" button on Your browser when doing so. You agree to note the date of the last revision to this Agreement. If the "last modified" date remains unchanged from the last time You reviewed this Agreement, then You may presume that nothing in the Agreement has been changed since the

last time You read it. If the "last modified" date has changed, then You can be certain that something in the Agreement has been changed.

2.3 Should You wish to terminate this Agreement due to any revisions made by Us, You must do so in writing via the cancellation form within thirty (30) days of the "last modified" date described above. Your continued use of the Services after the effective date of any such notice constitutes Your acceptance of such changes.

2.4 Waiver - if You fail to periodically review this Agreement to determine if any of the terms have changed, You assume all responsibility for such omission and You agree that such failure amounts to Your affirmative waiver of Your right to review the amended terms. We are not responsible for Your neglect of Your legal rights.

3. DURATION OF AGREEMENT AND CANCELLATION POLICY

3.1 The Initial Term shall begin upon confirmation of Your order or commencement of the Services to You and receipt of lawful funds. The term's length is chosen by You and shall be indicated when You order Our Services. This Agreement may not be terminated by You during the Initial Term (and any renewals thereof) except in the event of a breach by Zap5 Networks. After the Initial Term, this Agreement shall automatically renew for successive terms, equal in length to the Initial Term, unless terminated or canceled by either party as provided herein.

3.2 You must provide fourteen (14) days notice of non-renewal to Us should You not wish to renew this Agreement after the Initial Term. Zap5 Networks may terminate this Agreement at any time, without notice, in the event of nonpayment or violation of terms of service by You, if in Zap5 Networks' sole judgment You have in any way breached this Agreement ("Termination for Cause"). If you cancel any Service prior to the expiration of any Term, You understand and agree that Zap5 Networks will not issue You any refund whatsoever, including but not limited to any remaining pre-paid Fees, set up Fees, and/or special programming Fees).

3.3 Zap5 Networks may terminate this Agreement and the customer's account (including all services) in its sole discretion at any time for any reason or no reason. ("Termination without Cause"). In such case, Zap5 Networks will provide You with 24 hours written notice before the discontinuation of Services.

3.4 If Zap5 Networks cancels this Agreement pursuant to any of the terms outlined in this Agreement, with the exception of Termination without Cause pursuant to paragraph 3.3, Zap5 Networks shall not refund to You any fees paid or prepaid in advance of such cancellation and You shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation. In the event that Zap5 Networks terminates the Agreement for cause, all prepaid hosting fees will be forfeited and are not refundable. The termination of this Agreement does not relieve You of Your obligation to pay any Fees accrued or payable to Zap5 Networks prior to the effective date of termination of this Agreement.

3.5 Cancellations must be done in writing via the support ticket system at <https://www.zap5.net/clients/>. We require You to cancel in writing so that We can confirm Your identity and to confirm with You that You are prepared for all of Your content to be removed from Our servers. Once We receive Your cancellation and have confirmed all necessary information with You via e-mail, We will inform You via email to the email address on file that Your account has been canceled. If You do not receive the confirmation email within twenty-four (24) hours after submitting Your cancellation request, please contact Us immediately.

3.6 In addition to Zap5 Networks' right to terminate this Agreement provided elsewhere in this Agreement, Zap5 Networks may terminate this Agreement effective immediately if, based on Zap5 Networks' sole judgment, it determines that You or any of Your end-users: (a) have breached the Acceptable Use Policy ("AUP") as described in Section 12 of this Agreement, and incorporated herein, (b) have infringed or violated any intellectual property right or privacy or publicity right of a third party, (c) have not complied with any applicable law, statute or regulation, or (d) have uploaded, published or disseminated any images, text, graphics, code or video which Zap5 Networks considers illegal or high risk, in its discretion. Nothing contained in this Agreement is intended to, or shall, impose any duty or obligation upon Zap5 Networks to monitor or review Your Content or the content of Your end-users at any time. You remain solely responsible for Your Content, and any liability generated therefrom.

3.7 The termination of this Agreement will terminate Your access to the Services and Your license to the Host Materials (as defined in Section 5.2 of this Agreement). Zap5 Networks shall not be liable to You or to any third party for termination of the Services permitted under this agreement. Upon termination of this Agreement, Zap5 Networks reserves the right to maintain copies of Your data files and records for archival purposes, but does not undertake any obligation to do so. Zap5 Networks reserves the right to impose an early termination charge for all Services terminated prior to the last day of the billing cycle.

3.8 If either party cancels or terminates this Agreement for any reason, You shall be solely responsible for making all necessary arrangements for securing a replacement host and moving all electronic data, graphics, images, video or text to the new service provider. Upon termination of this Agreement, provisions that by their nature would be expected to survive termination shall survive and remain in full force and effect in accordance with their terms.

4. ACCOUNT SET UP

4.1 When You register for the Services, Zap5 Networks will provide You with a user ID and a password. You may use the Services or modify Your data and content only through such user ID and password. You are entirely responsible for maintaining the confidentiality of Your user ID and password and for any and all activities which occur using those credentials. You agree to immediately notify Us of any unauthorized use of Your account or any other breach of security known to You.

4.2 You must provide Us with a primary email address that is not part of any domain hosted by Us. All notices and communications between Us will be sent to the email address You provide, and You are therefore required to keep this address current or notify Us if Your address changes. You should notify Us if any of Your contact and/or billing information changes so that We may update Your account. It is also Your responsibility to make sure that Our domain(s), such as zap5.net, are not included in any spam block list used by You or Your mail provider.

4.3 Providing false or inaccurate contact information of any kind may result in the Termination for Cause of Your account per Section 3.2 of this Agreement.

4.4 You are responsible for all activity transpiring under Your account. We therefore highly recommend that You secure file, directory, and script permissions to the most restrictive settings possible. You agree that You have the technical ability to properly operate a web site and that You are responsible for any actions performed under Your account, including but not limited to, damage caused to Your site, Zap5 Networks' site and/or equipment, and any other site.

5. INTELLECTUAL PROPERTY RIGHTS

All Services provided by Zap5 Networks may only be used for lawful purposes.

5.1 As between You and Zap5 Networks, Zap5 Networks acknowledges that it claims no proprietary rights in or to the content (including without limitation, text, software, music, sound, audio visual works, motion pictures, photographs, animation, video and graphics) supplied by You for use on Your web site ("Your Content"). You hereby grant to Zap5 Networks a non-exclusive, worldwide and royalty-free license to copy, make derivative works, display, perform, use, broadcast and transmit on and via the Internet Your Content, solely for the benefit of You and to enable Zap5 Networks to perform its obligations hereunder.

5.2 In connection with performance of the Services and at the sole discretion of Zap5 Networks, Zap5 Networks may (but is not obligated to) provide You with certain materials, including, without limitation, computer software (in object code or source code form), data, documentation or information developed or provided by Zap5 Networks or its suppliers under this Agreement, domain names, electronic mail addresses and other network addresses assigned to You, and other know-how, methodologies, equipment, and processes used by Zap5 Networks to provide You with the Services ("Host Materials"). Subject to the terms and conditions of this Agreement, Zap5 Networks hereby grants You a limited, revocable, non-transferable, non-exclusive license to use the Host Materials solely in connection with the Services. This license terminates when this Agreement terminates. As between You and Zap5 Networks, You acknowledge and agree that Zap5 Networks owns all right, title, and interest or otherwise has acquired all applicable licenses for the Host Materials, and all copyright, trade secret, patent, trademark and other intellectual property rights therein. Any use of the Host Materials after termination of this Agreement is not licensed and strictly prohibited. You agree that You will not upload, transmit, reproduce, distribute or in any way exploit any Host Materials obtained through the Services without first obtaining the express written permission to do so from Zap5 Networks.

5.3 This Agreement does not constitute a license to use Zap5 Networks' trade names, service marks or any other trade insignia. Any use of any of Zap5 Networks' trade names, service marks or any other trade insignia is strictly prohibited, absent Zap5 Networks' prior written consent.

5.4 As a specific matter - You are not permitted to register any Uniform Resource Locator (URL) or world wide web address that contains any of Our trademarks or URLs or that contain any terms that are confusingly similar to Our trademarks or Our URLs.

5.5 You may not register any URL or world wide web addresses that consist of, or contain, common or likely misspellings of Our trademarks or Our URLs.

5.6 In the event that You wish to register a URL and You are unclear as to whether the URL would be considered to be a violation of this provision, You are invited to contact Us. Upon receipt of Your request, We will issue a determination to You within thirty (30) days as to whether the URL would be a violation of this Agreement.

5.7 In the event that You do not receive a response from Us within thirty (30) days, You should consider registration of the URL to be a violation of this Agreement and You should not register the URL.

5.8 If You violate this Agreement, You will immediately transfer the offending URL to Us upon demand, and You agree to pay Us \$5000 in stipulated liquidated damages for each URL registered in violation of this Agreement. This remedy shall be cumulative to any other legal or equitable remedies provided under provincial or federal law.

5.9 You specifically agree to pay the liquidated damages referenced above. In agreeing to pay these liquidated damages, You acknowledge that this amount is not a penalty, and that the actual damages are uncertain and difficult to ascertain, but that this amount represents the parties' good faith attempt to calculate an appropriate compensation based on anticipated actual damages.

5.10 If We are required to enlist the assistance of an Attorney or other person to collect any liquidated damages or any other amount of money from You, or if We are required to seek the assistance of an Attorney to pursue injunctive relief against You, or if We are required to file an ICANN complaint against You in order to bring about the transfer of an offending URL to Us from You, then You additionally agree that You will reimburse Us for all fees incurred in order to collect these liquidated damages, or in order to seek injunctive relief from You, or in order to file and prosecute an ICANN complaint.

5.11 You understand that even a nominal amount of damages may require the expenditure of extensive legal fees, travel expenses, costs, and other amounts that may dwarf the liquidated damages themselves. You agree that You will pay all of these fees and costs.

6 DMCA Notice and Takedown Policy

6.1 Introduction

Zap5 Networks ("Zap5 Networks") implements the following DMCA Notice and Takedown Policy. Zap5 Networks respects the intellectual property rights of third parties, and expects others to do the same. As part of our effort to recognize the copyrights of third parties, Zap5 Networks complies with the U.S. Digital Millennium Copyright Act ("DMCA") and is therefore protected by the limitations on liability recognized by 17 U.S.C. § 512; commonly known as the "safe harbor" provisions of the DMCA. Zap5 Networks' infringement notification procedure, counter-notification procedure, and takedown policies, are set forth below.

Depending on physical location of services this section may not apply. Ensure you check - else your DMCA may go directly into the trash!

7 Notice of Claimed Infringement

7.1 Abuse Warning

The DMCA permits copyright owners, or their authorized agents, to submit notifications to service providers, such as Zap5 Networks, requesting that infringing material hosted on Zap5 Networks' servers be disabled or removed. Importantly, the DMCA imposes significant penalties - including court costs and attorneys fees - on those who abuse the infringement notification procedure, by misrepresenting either that material is infringing, or was removed by mistake. See; 17 U.S.C. § 512(f). Zap5 Networks will pursue those who abuse its DMCA notice or counter-notification procedure, and will cooperate with law enforcement in any investigation of such abuse. Please make sure that you meet all the qualifications before submitting a DMCA notice to our Designated Agent identified below.

7.2. Notification Contents and Procedure

If you believe that your work has been copied, reproduced, altered or published in a way that constitutes copyright infringement under federal law, or your copyrights have been otherwise violated, please submit a DMCA notice to Zap5 Networks' Designated Copyright Agent, containing the following:

1. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. a description of the copyrighted work or other intellectual property that you claim has been infringed;
3. a description of where the material that you claim is infringing is located on Zap5 Networks' servers (preferably including specific URL's associated with the material);
4. your full name, address, telephone number, and email address;
5. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent(s), or the law; and

6. a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Claimants may send their Notice of Claimed Infringement to:

Zap5 Networks, Abuse Dept.
#205 - 689 Tranquille Road
Kamloops, BC, V2B 0C7
+1 (855) 375-8324 (fax)
abuse [at] zap5 [dot] net

Please do not send other inquires or information to our Designated Agent.

8. Takedown Policies and Procedures

Zap5 Networks implements the following Takedown Policies and Procedures. Upon receipt of any notification of claimed copyright infringement, Zap5 Networks will act expeditiously to notify its customer of the alleged infringement, and take steps to disable or remove the subject material. DMCA Notices are generally processed within two (2) business days from receipt, absent extenuating circumstances. Zap5 Networks reserves the right at any time to disable access to, or remove any material or expressive work accessible on or from its servers or services, that is claimed to be infringing via a valid DMCA Notice, or based on facts or circumstances from which infringing activity is apparent. It is the firm policy of Zap5 Networks to terminate the account of repeat copyright infringers, when appropriate, and Zap5 Networks will act expeditiously to remove access to all material that infringes on another's copyright, according to the procedure set forth in 17 U.S.C. §512 of the DMCA. The procedure for notifying Zap5 Networks of claimed copyright infringement is set forth in Section 7.2, hereof. If the DMCA notice does not comply with §512 of the DMCA, but does substantially comply with the (3) three requirements for identifying infringing works according to §512 of the DMCA, Zap5 Networks shall attempt to contact or take other reasonable steps to reach the complaining party to assist that party comply with sending a compliant DMCA Notice. As noted above, when Zap5 Networks' Designated Agent receives a valid notice, Zap5 Networks will act expeditiously to remove and/or disable access to the infringing material and shall notify the affected customer or subscriber. Then, the affected customer or subscriber may submit a counter-notification to the Designated Agent, using the counter-notification procedures set forth below. Zap5 Networks reserves the right to modify, alter or add to this policy, and all affected persons should regularly check back to this page to stay current on any modifications.

9. Counter-Notification Procedures

If the Recipient of a Notice of Claimed Infringement ("Notice") believes that the Notice is erroneous or false, and/or that allegedly infringing material has been wrongly removed/disabled in accordance with the procedures outlined above in Section III above, the Recipient is permitted

to submit a counter-notification pursuant to 17 U.S.C. § 512(g)(2) & (3). A counter-notification is the proper method for the Recipient to dispute the improper removal or disabling of material pursuant to a Notice. The information that a Recipient provides in a counter-notification must be accurate and truthful, and the Recipient will be liable for any misrepresentations contained in the counter-notification pursuant to 17 U.S.C. § 512(f).

9.1 To initiate a counter-notification, the Recipient must submit to Zap5 Networks' Designated Copyright Agent the following information:

1. a specific description of the material that was removed or disabled pursuant to the Notice.
2. a description of where the material was located within Zap5 Networks or the Content before such material was removed and/or disabled (preferably including specific URL's associated with the material.)
3. a statement reflecting the Recipient's belief that the removal or disabling of the material was done so erroneously. For convenience, the following language may be utilized:
"I swear, under penalty of perjury, that I have a good faith belief that the referenced material was removed or disabled by the service provider as a result of mistake or misidentification of the material to be removed or disabled."
4. a statement that the Recipient consents to the jurisdiction of the Federal District Court in and for the judicial district where the Recipient is located, or if the Recipient is outside of the United States, for any judicial district in which the service provider may be found, and that the Recipient will accept service of process from the person who provided the Notice, or that person's agent.
5. the Recipient's physical address, telephone number, and email address.

Counter Notifications can be sent to:

Zap5 Networks, Abuse Dept.
#205 - 689 Tranquille Road
Kamloops, BC, V2B 0C7
+1 (855) 375-8324 (fax)
abuse [at] zap5 [dot] net

Please do not send other inquires or information to our Designated Agent.

After receiving a DMCA-compliant counter-notification, Our Designated Copyright Agent will forward the counter-notification to the original claimant who first provided the Notice identifying the allegedly infringing material.

Within ten to fourteen (10-14) days from Zap5 Networks' receipt of a valid counter-notification, Zap5 Networks will replace or cease disabling access to the disputed material unless Zap5

Networks' Designated Agent receives notification that the original claimant has filed an action seeking a court order to restrain the Recipient from engaging in infringing activity relating to the material on Zap5 Networks' system or network.

10. Service Provider Customers of Zap5 Networks

Some of Zap5 Networks' customers are, themselves, "Service Providers" within the meaning of 17 U.S.C. § 512(k)(1). Accordingly, Zap5 Networks requests that any DMCA Notices relating to alleged infringement by third party users, customers or subscribers of Zap5 Networks' Service Provider Customers be submitted directly to the DMCA Agent designated by such customer.

11. Modifications

Zap5 Networks reserves the right to modify, alter or add to the DMCA policy set forth in Sections 6-10 above, and all users should regularly check back regularly to stay current on any such changes.

12. CONTENT AND ACCEPTABLE USE POLICY

12.1 You agree to comply with Zap5 Networks' Acceptable Use Policy ("AUP"), which may be found by accessing Zap5 Networks' web site, which policy is hereby incorporated by reference as an indispensable part of this Agreement. Zap5 Networks reserves the right to modify the AUP at any time by posting the modified policy on its web site. You agree to monitor the Zap5 Networks home page for any changes to the AUP. Your continued use of the Services after the effective date of any changes to the AUP constitutes Your manifestation of intent to be bound by such changes. Zap5 Networks may, at its sole discretion, immediately terminate Your access to the Services, or this Agreement, if Your conduct violates the AUP, or if any of Your end users' conduct violates the AUP.

12.2 Zap5 Networks will not actively monitor the content of the web sites being hosted by Zap5 Networks, although Zap5 Networks, at its sole discretion, may elect to electronically monitor its network and may disclose any content or records concerning Your account as necessary to satisfy any law, regulation, or other governmental request or to properly operate Our network and protect any of Our customers. Zap5 Networks will investigate complaints of a violation of a third party right or of the AUP. Zap5 Networks will cooperate with those attempting to minimize Internet abuse and reserves the right to institute "filters" or other mechanisms for that purpose. Zap5 Networks will cooperate with law enforcement authorities and reserves the right to notify such authorities if it suspects that You or any of Your end users are engaged in illegal activities. Nothing contained in this Section, or anywhere in this Agreement, is intended to bestow any rights on any third party, and no third parties shall be entitled to enforce any terms of this Agreement between the Parties.

12.3 You acknowledge and expressly agree that Zap5 Networks will not be liable to You or any of Your end users for any action Zap5 Networks takes to remove or restrict access to the Services for

any alleged violation of the AUP, or exercising its rights as a Good Samaritan under the Telecommunications Act of 1996 (47 U.S.C. § 230(d)) or under the Digital Millennium Copyright Act of 1998 (See Section 12.8 below).

12.4 Zap5 Networks may, at its sole discretion, immediately terminate Your access to the Services, and terminate this Agreement for cause, if Your conduct violates the acceptable uses outlined below, or if any of Your end users' or downstream customers' conduct violate such acceptable uses.

12.5 Zap5 Networks takes the issue of child pornography very seriously, and any potential harm to minors using our services is strictly prohibited. Content that is or may be perceived to be child pornography will be immediately removed from public access upon notification or detection by Us. Additionally, Zap5 Networks reserves the right to terminate any account whose website(s) hosts or links to child pornography immediately and without notice to You. If the account is a Zap5 Networks reseller account, the account will be suspended and the reseller will be directed to terminate the responsible account. You agree to cooperate in any such efforts. Content or communications seeking to solicit, lure or entice minors into sexual activity or lewd behavior is also strictly prohibited, and will be treated the same as, or similar to, child pornography, consistent with applicable law. You agree to cooperate with Zap5 Networks in any effort to investigate, disable or remove such content originating with Your end-users. Consistent with federal law, Zap5 Networks will cooperate with law enforcement authorities and will notify such authorities if it suspects that You or any of Your downstream customers or end users are engaged in any such illegal activities.

12.6 In accordance with the reporting requirements of 18 U.S.C. § 2258A, We will report to the CyberTipline (www.cybertipline.com) any actual knowledge of apparent violations of 18 U.S.C §§ 2251, 2251A, 2252, 2252A, 2252B, 2260, or 1466A. If You suspect any instances of child pornography appearing on sites hosted by Zap5 Networks, We encourage You to send such reports to Our abuse address (abuse@zap5.net), and include the file name and/or URL (or other location on the customer's site), victim (if known), date of birth, date of production, and any other information about the suspect image(s). Do not send the image(s) in question. Alternately, You may use the CyberTipline to report suspected child pornography. Reports involving sites not hosted by Zap5 Networks should be directed to law enforcement or to a cooperating child pornography organization such as: <http://www.asacp.org>.

12.7 We respect the intellectual property rights of all parties and have adopted a policy regarding termination of repeat copyright infringers under the Digital Millennium Copyright Act for content that applies under DMCA jurisdiction. Copies of Our Repeat Infringer Policy are available on request to our clients.

12.8 Section 230 Notice: You acknowledge Your responsibility to prevent minors under Your care from accessing harmful or inappropriate material on Your site. You agree not to allow minors to view any such site, and agree to take responsible measures to prevent them from doing so. Numerous commercial online safety filters are available which may help users limit minors' access

to harmful or inappropriate material. Pursuant to 47 U.S.C. §230(d), You are hereby informed that You can research such services at websites such as: www.getnetwise.org or http://www.child-internet-safety/internet_filters.php, among others. Please note that this Site makes no representation or warranty regarding any of the products or services referenced on such sites, and recommend that the user conduct appropriate due diligence before purchasing or installing any online filter. You agree to take particular steps to prevent minors from viewing this site if Your computer can be accessed by a minor. Finally, You agree that if You are a parent or guardian of a minor child, it is Your responsibility, not Ours, to keep any age-restricted content on Our Site from being displayed or accessed by Your children or wards.

Pursuant to the Communications Decency Act ("CDA"), 47 U.S.C. § 230(c)(1), and court decisions interpreting the scope of the CDA, You acknowledge and understand that Zap5 Networks operates as the provider of an interactive computer service. Thus, We are immune from, and cannot be held responsible for, claims arising from the publication of Your content (including third-party content published on Your website(s)). We do not create such content, and We are not responsible for the publication of remarks or communications of You or third-parties that may arguably rise to the level of being actionable under federal or state laws including, but not limited to, the publication of material that might be considered defamatory, or violative of privacy or publicity rights. Note, that federal law allows Zap5 Networks to remove any content found to be offensive, defamatory, obscene or otherwise violative of Our policies, without impacting Our immunity status as an interactive computer service. Nothing contained in this paragraph is intended to limit or alter the immunity from claims provided by Section 230 of the Communications Decency Act. In the event that any court finds that any third party communication or third party content hosted by us falls outside of the realm of the immunity provided by the CDA, this shall not be deemed to be a waiver of any legal protections provided by Section 230 for any and all other content posted on our Website or hosted via our Services.

12.9 Specific Requirements for Service Provider and User-Generated Content Subscribers

If You use Our Services for any site, sub-domain, page or business model that allows Your end users or customers to control or upload material to Internet space assigned to You by Us, You shall be deemed to be acting as a "Service Provider" with respect to such services and/or customers. Service Providers include but are not limited to Clients which; a) resell bandwidth as hosts to third parties; b) operate user-generated content sites such as forums, "tube" sites, review sites, and online classified advertising sites; c) operate search engines; or d) operate peer-to-peer file sharing networks. Clients acting as a Service Provider for third party users shall comply with the following provisions:

- You shall notify Us of all domains, web pages or IP addresses for which You are acting as Service Provider.
- You shall comply with 17 U.S.C. §512 of the DMCA by properly designating an agent for receipt of copyright infringement notices, and You shall publish a link on the home page of any website for which You are a Service Provider to a DMCA Notice and Takedown Policy, identifying the website's designated agent and associated contact information.

- You shall provide Us with a current link to Your DMCA Notice and Takedown Policy and further advise Us of any changes to Your Designated Agent contact information. This shall be a continuing obligation for as long as You use Our Services.

It is the policy of Zap5 Networks to provide any infringement notices it receives relating to Service Provider Subscribers, directly to the Subscriber's Designated DMCA Agent, and to further notify any copyright claimants of the identity and contact information for the Service Provider Subscriber's Designated DMCA Agent. Failure to maintain compliance with this section shall constitute a material breach of this Agreement. Nothing contained herein should be interpreted as legal advice, and You are encouraged to consult your personal attorney regarding DMCA safe harbor compliance, or any other legal matter.

12.10 In keeping with Our DMCA policies and obligations set forth above, You understand, agree, and expressly allow Us to access and subsequently disable public access to any files or data residing on the server, disk, partition, or other data space under Your control as Our customer when such files or data, in Our discretion; 1) have been identified in a substantially compliant DMCA notice under 17 U.S.C. § 512; or 2) when We become aware of facts or circumstances indicating that such files or data are infringing on the copyrights or other intellectual property rights of third parties. Given that Our customers may employ various methods of securing files in conjunction with Our Services, and in an attempt to avoid material disruption of Our customers' Services, You agree that You will provide Us with Your preferred procedure for disabling access to material identified under this provision. If We forward You a substantially compliant DMCA Notice and which concerns content under Your control, You are obligated under this Agreement to immediately disable or remove access to such content. Irrespective of the above, We reserve the right to disable or remove access to such content, in Our discretion, and without claim of damage or injury by You. While We will attempt to simply disable access to such content without fully deleting it, or suspending all services to your account, We make no warranties concerning harm or injury to the content, and reserve the right to take any necessary actions to disable access to the identified material, including suspension or termination of Services. It is therefore in Your best interest to promptly respond to any DMCA Notices You may receive. Should You or Your website's users feel that such DMCA Notice was erroneously or improperly sent, You must follow the Counter-Notification procedure set forth above, and wait the required period of time, before We allow public access to the content to resume.

12.11 Nothing contained in this Section, or any part of this Agreement, shall constitute legal or professional advice regarding any matter referenced therein. You are responsible for obtaining your own legal advice regarding compliance with any and all applicable laws or regulations.

13. ZERO TOLERANCE SPAM POLICY

13.1 You agree to comply with Zap5 Networks' Anti-Spam Policy which may be found at <http://www.zap5.net/legal/> and which is hereby incorporated by reference as an indispensable part of this Agreement. Use of Zap5 Networks' services for any illegal spam activities is strictly prohibited.

13.2 Zap5 Networks reserves the right to modify the Anti-Spam Policy at any time by posting the modified policy on its web Site. You agree to monitor Zap5 Networks' home page for any changes to the Anti-Spam Policy. Your continued use of the Services after the effective date of any changes to the Anti-Spam Policy constitutes Your manifestation of intent to be bound by such changes.

14. PAYMENT

14.1 Payment for Services is due in advance of the time period for which such payment covers. Services are billed on an automatic and recurring basis unless and until you follow Zap5 Networks' cancellation procedure set forth in this Agreement.

14.2 Unless separately negotiated by You and Us, and confirmed by separate written agreement, the initial and recurring Fees for the Services selected by You shall be as provided in the initial on-line order form. **All set-up fees and special programming fees are non-refundable.** Fees for Services are payable in advance. Failure to make payment of Fees for Services when due may result in the suspension or termination of Services.

14.3 At the time of registration, You must select a payment method. Zap5 Networks reserves the right to contract with a third party to process all payments. Such third party may impose additional terms and conditions governing payment processing. If You do not pay all Fees when due, Your account will be deemed past due. For any past due Fees, Zap5 Networks will charge You a **late fee at fifteen percent (15%)** or the highest rate allowed by applicable law, whichever is lower, per month of the unpaid amount, until paid. A minimum late fee amount of \$2.50 USD is charged in cases where the calculated late fee falls below this figure.

14.4 You agree to pay any and all taxes, including personal property, value added, or sales taxes, resulting from Your use of the Services. Zap5 Networks is not responsible for any bank fees incurred by You due to Your use of check cards, automatic payment services, insufficient funds, and any and all other fees your financial institution may impose due to Your use of the Services. If Zap5 Networks should receive less than full payment of the Fees due to taxes, bank charges, transfer fees, or the like, Zap5 Networks will invoice You for the difference between payment received and the Fees due.

14.5 You also agree to pay all attorney and collection fees arising from Zap5 Networks' efforts to collect any past due Fees. If you cancel any Service prior to the expiration of the pre-paid Fees, You understand and agree that Zap5 Networks will not issue You any refund whatsoever, including but not limited to any remaining pre-paid Fees, set up Fees, and/or special programming Fees.

14.6 Coupons and Discount Codes - From time to time, Zap5 Networks may offer coupons or other discount codes which may be used when signing up for hosting with Us. Coupons and discount codes are for first-time customers of Zap5 Networks and must be used at the time of Your initial purchase with Us - they may not be applied after Your service with Us has already been initiated. Unless expressly provided, such coupons and discount codes may not be used

toward upgrades to Your account. Any account We deem to be attempting unauthorized coupon or discount code use may be subject to Termination for Cause.

14.7 Accounts that are past due over **7 days** are deemed to be abandoned and are subject to **permanent and non-recoverable termination of services including data destruction**. Data stored on a client's services will not be available to the client until reconnection is established or alternative arrangements are made to the sole satisfaction of Zap5 Networks. Zap5 Networks is NOT responsible for data integrity, regardless of circumstance. Zap5 Networks strongly recommends keeping up to date and off network backups to protect against data loss.

15. BACK UPS & DATA LOSS

15.1 You agree that Your use of Zap5 Networks' Services is at Your own risk, and that Zap5 Networks is not liable for any data loss in connection with its Services. You are solely responsible for creating backups of Your Content. If, during Our own routine maintenance, We do create a backup of Your Content which You later request Us to restore to Your account, We cannot guarantee that we will be able to do so, or that Your Content will be unharmed as a result of the initial data loss or the subsequent restore procedure. To that end, We highly recommend that You establish Your own routine backup procedure and that You periodically test restoring files from Your backup media to ensure that You are making viable backups.

15.2 You acknowledge that unless you subscribe to a Hosting Service that expressly includes the independent backup of Your Content as a service, Zap5 Networks' back-up activities are primarily for Zap5 Networks' own disaster recovery purposes, and that **YOU ARE RESPONSIBLE FOR THE STORAGE, BACK-UP AND ARCHIVING OF YOUR CONTENT**. Also note, Hosting Services include access to one or more tools via your Control Panel that allow you to back-up Your Content. Please use these tools and back-up Your Content frequently.

16. RESOURCE USAGE & SECURITY

16.1 Zap5 Networks may, at its discretion, impose hard set limits on each account's system resources. We do not actively disable accounts until they greatly exceed an acceptable level of usage. There are numerous activities that could cause such problems; these include: CGI scripts, FTP, PHP, HTTP, etc. Zap5 Networks will advise You of a temporary block placed on any account found to be consuming an inordinate amount of system resources, to the point of degrading overall system performance.

16.2 Except where expressly permitted by law, You may not translate, reverse-engineer, decompile, disassemble, or make derivative works from the Site and/or Materials. You hereby agree not to use any automatic device or manual process to monitor or reproduce the Site or Materials, and will not use any device, software, computer code, or virus to interfere or attempt to disrupt or damage Our Services and Site or any communications on it. If You do not adhere to this provision of this Agreement, in addition to monetary damages and other remedies available to

Zap5 Networks, You hereby agree to pay liquidated damages of \$5000.00 plus any and all fees associated with recovery of these damages, including attorneys' fees and costs.

16.3 SECURITY Any violation of the security to the Site and/or Services is prohibited and may result in criminal and civil liability. Unauthorized Access of the servers used to provide the Site, Services, and/or Materials (the "Servers") is strictly prohibited and is a violation of this Agreement and the AUP per Section 6 of this Agreement. You agree not to engage in such activity or to attempt to breach the Servers for the purpose of altering or manipulating the hardware and software, compromising the Servers, or for any other unauthorized use commonly known as "hacking." In addition, You are prohibited from the following:

1. Any form of unauthorized access to or use of data, systems or networks, including the Site and/or Services;
2. Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network;
3. Unauthorized interference with service to any user, host or network;
4. Introducing a malicious program into the network or server (e.g. viruses and worms), including the Site and/or Services;
5. Circumventing user authentication or security of any host, network or account;
6. Using an account with another provider to promote Your site with Us in an abusive manner.
7. Utilizing Our Services for the purpose of compromising the security or tampering with system resources or accounts on computers at Our site or any other site.

In the event You are involved in any violation of system security, We reserve the right to release information about You to system administrators at other sites in order to assist in resolving security incidents, and We shall also cooperate with any law enforcement agency investigating a criminal violation of system or network security. Additionally, any violation of these security provisions may, at Our sole discretion, be grounds for Termination for Cause as described in Section 3.2 of this Agreement.

16.4 BANDWIDTH USAGE Your monthly bandwidth allowance is determined by the specific package for which You sign up. If Your account exceeds Your monthly allowance, You will be charged an overage fee as outlined in Your service order. If this fee is not outlined in Your service order, then You will be charged the default rate of \$25.00 per Megabit overage, or \$0.10 per Gigabyte, whichever is lower. Unused bandwidth is not carried over to the next month for purposes of a credit. Unmetered bandwidth plans may be part of a shared pool of bandwidth, please consult a sales representative to see if the plan you are interested in is dedicated or shared.

16.5 FAIR USE POLICY You may not use the Services or Zap5 Networks' technology infrastructure in any manner that interferes with or disrupts Zap5 Networks' other customers. If disruptive use to other customers is detected it is considered a breach of these terms and Zap5 Networks may

exercise its rights under section 3 including suspending or termination of Services. We provide specific Services to our Clients and define normal, fair, and reasonable use. We expect regular usage patterns from individual component machines and the client solution as a whole. Should we at our sole discretion determine a Client is not using this Service as defined under this Fair Use Policy, we may take actions to mitigate negative impact to Service delivery systems including but not limited to the following:

1. Rate-limit the data the Client may send and/or receive from the individual service to the entire solution level
2. Impose hard limits on resource usage
3. Adjust pricing to a standard bandwidth rate (market-dependent)
4. Suspend or terminate Service to any or all Client services

Additional Considerations

*We offer Content Delivery Network (CDN) Services and we facilitate streaming media solutions for our clients. Clients may not use TB/Unmetered bandwidth plans for the purpose of operating a CDN, nor may they run streaming media solutions or VPN services without gaining consent from Us.

16.6 UNLIMITED POLICY On certain web hosting plans, Zap5 Networks does not place limits on the amount of particular resources a single client may use. Zap5 Networks makes every reasonable effort to provide clients with the disk space and bandwidth resources needed for their websites within the limitations of these Terms of Service. Zap5 Networks monitors all servers via automated and non-automated methods to help ensure no single client adversely impacts other clients located on the same server. *Please review the Acceptable Usage Policy for more details.*

Please note that shared hosting plans are for website hosting only. The storage of backups (unless otherwise allowed in this agreement), file repositories, MP3s, videos, photo archives, and similar is strictly prohibited. Violators of this policy may have their accounts terminated.

17. UPTIME GUARANTEE

17.1 Zap5 Networks may offer You a Service Level Agreement ("SLA") guaranteeing certain availability of Our Services. If applicable, the terms of any such SLA were separately negotiated between You and Us, and such SLA, if any, is hereby incorporated by reference as an indispensable part of this Agreement.

To be eligible for any credits to Your account, You must follow the specific procedures set forth in the SLA for notifying Us of Your desire for credits. You understand and agree that the failure to follow the procedure in the SLA within three (3) days of the triggering event will result in Your waiver of any right to receive credits.

18. PRICE CHANGE

The amount You pay for hosting will never increase during a specific term or time period for which you have signed up for Our Services. We reserve the right to change prices listed on zap5.net at any time, without notice, and the right to modify the amount of resources given to plans at any time. Additionally, if we terminate this agreement without cause pursuant to paragraph 3.3 of the Agreement, You understand that if We agree to provide Services to You in the future, the amount You paid under any prior term or time period is not determinative of the amount You pay should We provide Services to You again. It is Your responsibility to check Our website for plan or price changes should You wish to take advantage of plan or price changes which may have occurred. Zap5 Networks does not automatically update Your plan. All upgrades or downgrades will be performed at Your request and may include modification fees or require reinitiating service with Us.

19. INDEMNIFICATION

You agree to defend, indemnify, and hold Zap5 Networks and its Affiliates harmless from and against any and all claims and liabilities, including reasonable attorneys' and experts' fees, related to or arising from (a) any breach of Your covenants under this Agreement; (b) Your use of the Services; (c) all conduct and activities occurring under Your user ID and password; (d) any item or service sold or advertised in connection with Your Content or Your information and data; (e) any defamatory, libelous or illegal material contained within Your Content or Your information and data; (f) any claim or contention that Your Content or Your information and data infringes any third party's patent, copyright or other intellectual property rights or violates any third party's rights of privacy or publicity; (g) any third party's access or use of Your Content or Your information and data; (h) any violation of the applicable Acceptable Use Policy; and, (i) to the extent applicable to Your site, You warrant and represent that: 1) Your Content complies with Title 18, *U.S.C.* § 2257 and 28 *C.F.R.* § 75 et seq., as amended; 2) all performers depicted in the Your Content were over the age of eighteen (18) when the content was created; 3) Your Content does not contain any images which constitute child pornography, obscenity, bestiality, actual depictions of violence, or activities otherwise illegal in the United States of America; and 4) all representations and reproductions of any aspect of the likeness of actual people in the Your Content have been duly authorized and permitted by the persons depicted. In the event of a claim under this section, Zap5 Networks shall be permitted to select legal counsel to provide a defense to such claim. Zap5 Networks reserves the right, at its own expense, to participate in the defense of any matter otherwise subject to indemnification from You, but shall have no obligation to do so. You shall not settle any such claim or liability without the prior written consent of Zap5 Networks, which shall not be unreasonably withheld.

20. NO WARRANTIES

YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE AND EXCLUSIVE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" BASIS. ZAP5 NETWORKS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED,

INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. OTHER THAN AS SET FORTH IN PARAGRAPH 11, ZAP5 NETWORKS MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES ZAP5 NETWORKS MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES OR THAT DEFECTS IN ANY SOFTWARE, HARDWARE OR THE SERVICES WILL BE CORRECTED. ANY STATEMENTS MADE REGARDING SUCH MATTERS IN PROMOTIONAL MATERIALS SHALL BE CONSIDERED ADVERTISING REFERENCES, AND NOT WARRANTIES. YOU UNDERSTAND AND AGREE THAT ANY USE YOU MAKE OF ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS AT YOUR OWN DISCRETION AND RISK, AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA.

ZAP5 NETWORKS MAY MAKE THIRD-PARTY GOODS, SERVICES AND/OR SOFTWARE AVAILABLE TO YOU THAT ARE NOT PART OF THE SERVICES ("THIRD-PARTY SERVICES"). ZAP5 NETWORKS HAS NO CONTROL OVER THE CONTENT OF THIRD-PARTY SERVICES. USE OF ANY THIRD-PARTY SERVICES WILL BE AT YOUR OWN AND SOLE RISK AND SUBJECT TO THE TERMS AND CONDITIONS OF A SEPARATE AGREEMENT BETWEEN YOU AND THE THIRD-PARTY.

ZAP5 NETWORKS MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICES OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ZAP5 NETWORKS OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY, WHETHER BY IMPLICATION, ESTOPPEL OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY MARKETING OR PROMOTIONAL MATERIALS DESCRIBING THE SERVICES ON ZAP5 NETWORKS' WEBSITE.

UNLESS OTHERWISE AGREED TO IN WRITING, ZAP5 NETWORKS DOES NOT MAKE A BACK-UP OF YOUR SITE(S) AS PART OF THE SERVICES. ACCORDINGLY, WE ENCOURAGE YOU TO MAKE A BACK-UP OF YOUR SITE(S) ON A REGULAR BASIS.

21. LIMITATION ON LIABILITY

YOU ARE SOLELY RESPONSIBLE FOR THE PROPER OPERATION OF YOUR WEB-SITE AND/OR CONDUCT OF YOUR BUSINESS AND ALL OTHER MATTERS UNDER YOUR CONTROL. IN NO EVENT SHALL ZAP5 NETWORKS BE LIABLE TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO YOUR OPERATION OF YOUR WEB-SITE AND/OR BUSINESS OR FAILURE TO OPERATE YOUR WEB-SITE AND/OR BUSINESS.

THIS SECTION APPLIES TO ALL CLAIMS BY YOU OR YOUR END USERS IRRESPECTIVE OF THE CAUSE OF ACTION UNDERLYING THE CLAIM, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT,

INCLUDING BUT NOT LIMITED TO NEGLIGENCE, STRICT LIABILITY, FRAUD, AND/OR MISREPRESENTATION.

REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, YOU AGREE THAT IN NO EVENT WILL ZAP5 NETWORKS, OUR AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OR LICENSORS, OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICES, TECHNOLOGY, OR CONTENT AVAILABLE ON THE SERVICES ("AFFILIATES"), BE LIABLE TO YOU IN ANY MANNER WHATSOEVER: (A) FOR ANY DECISION MADE OR ACTION OR NON-ACTION TAKEN BY YOU IN RELIANCE UPON THE INFORMATION PROVIDED THROUGH THE SERVICES; (B) FOR LOSS OR INACCURACY OF DATA OR, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (C) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES, LOSS OF PROFITS OR LOSS OF REPUTATION, FOR BUSINESS INTERRUPTION OR SIMILAR ACTION, EVEN IF ZAP5 NETWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL AGGREGATE AND MAXIMUM LIABILITY OF ZAP5 NETWORKS AND THE AFFILIATES, ARISING FROM OR OTHERWISE RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION OR CLAIM) IS LIMITED TO ANY AMOUNTS YOU HAVE PAID TO ZAP5 NETWORKS DURING THE SIX (6) MONTHS PRIOR TO THE ACCRUAL OF THE CAUSE OR CAUSES OF ACTION.

22. GENERAL PROVISIONS

22.1. Jurisdiction. This Agreement and all matters arising out of or otherwise relating to this Agreement shall be governed by the laws of the Province of British Columbia, Canada, excluding its conflict of law provisions. The parties hereby submit to the personal jurisdiction of the provincial and federal courts of British Columbia, Canada in the event litigation permitted under this Agreement is initiated. Exclusive venue for any litigation permitted under this Agreement shall be with the provincial and federal courts located in British Columbia, Canada.

22.2. Arbitration. If there is a dispute between the parties arising out of or otherwise relating to this Agreement, the parties shall meet and negotiate in good faith to attempt to resolve the dispute. If the parties are unable to resolve the dispute through direct negotiations, then, except as otherwise provided herein, either party shall submit the issue to binding arbitration in accordance with the then-existing Commercial Arbitration Rules of the American Arbitration Association. Arbitral Claims shall include, but are not limited to, contract and tort claims of all kinds, and all claims based on any federal, state or local law, statute, or regulation, excepting only claims under applicable worker's compensation law, unemployment insurance claims, intellectual property claims, actions for injunctions, attachment, garnishment, and other equitable relief. The arbitration shall be conducted in British Columbia, Canada and conducted by a single arbitrator, knowledgeable in Internet and e-Commerce. Except as provided below, the party bringing the action shall be responsible for paying all costs for arbitration, including the arbitrator's fees. Each party shall bear its own attorneys' fees (except if the matter is for the

collection of a debt owed, the prevailing party shall be awarded its attorneys fees, all arbitration costs and arbitrator fees, in addition to all other applicable remedies). The arbitrator shall have no authority to award any punitive or exemplary damages; certify a class action; add any parties; vary or ignore the provisions of this Agreement, and shall be bound by governing and applicable law. The arbitrator shall be willing to execute an oath of neutrality. The arbitrator shall render a written opinion setting forth all material facts and the basis of his or her decision within thirty (30) days of the conclusion of the arbitration proceeding. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRAL CLAIMS.

22.3. Assignment. The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective assignees, successors, executors, and administrators, as the case may be. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned or otherwise transferred, in whole or in part by You.

22.4. Severability. If for any reason a court of competent jurisdiction or arbitrator finds any provision of this Agreement, or any portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.

22.5. No Waiver. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision, and no waiver of one breach will constitute a waiver of subsequent breaches of the same or of a different nature.

22.6. Complete Agreement. This Agreement (including all other policies incorporated herein) constitutes the entire agreement between the parties with respect to the Services, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of both parties.

22.7. Relationship Between the Parties. Zap5 Networks is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

22.8. Non-Solicitation. Beginning upon commencement of the Services to You and continuing for a period of two (2) years after the termination of this Agreement or after any other cancellation or termination of Your account or Services with Us, You agree not to directly or indirectly, solicit, hire, contract, or otherwise employ any Zap5 Networks employee who was an employee during the term of this Agreement (including the Initial Term and any successive terms), to work for You or any other firm, person or business, of whatever character, corporate or otherwise.

22.9. Headings. Section and subsection headings of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

22.10. Force Majeure. Zap5 Networks shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond its reasonable control, including but not limited to: acts of God; war, riot, embargoes, acts of civil or military authority, or terrorism; fire, flood, earthquakes, hurricanes, tropical storms or other natural disasters; fiber cuts; strikes, or shortages in transportation, facilities, fuel, energy, labor or materials; failure of the telecommunications or information services infrastructure; hacking, SPAM, or any failure of a computer, server or software for so long as such event continues to delay Zap5 Networks' performance.

22.11. Export. You understand and acknowledge that the software elements of the Host Materials may be subject to regulation by agencies of the U.S. Government, including the U.S. Department of Commerce, which prohibits export or diversion of software to certain countries and third parties. You will not assist or participate in any such diversion or other violation of applicable U.S. laws and regulations. You warrant that You will not license or otherwise permit anyone not approved to receive controlled commodities under applicable U.S. laws and regulations and that You will abide by such laws and regulations.

22.12. Government Rights. The software elements of the Host Materials have been developed at private expense and are "commercial computer software" or "restricted computer software" within the meaning of the FARs, the DFARS, and any other similar regulations relating to government acquisition of computer software. Nothing contained herein will be deemed to: (i) grant any government agency any license or other rights greater than are mandated by statute or regulation for commercial computer software developed entirely at private expense, or (ii) restrict any government rights in any extensions or custom solutions provided hereunder and developed at government expense.

22.13. Notices Electronic Communications. All notices permitted or required under this Agreement may be sent by e-mail, fax, express mail, mail, or registered mail to the e-mail address, fax number, or address most recently provided by You and will be effective upon transmission. Evidence of successful transmission shall be retained. Each of the parties may communicate with the other by electronic means as described in this Agreement. Each of the parties agrees to the following for all electronic communications: (i) The user identification of a sender, contained in an electronic communication, is legally sufficient to verify the sender's identity and the communication's authenticity; (ii) An electronic communication sent by You containing Your user identification establishes You as its originator and has the same effect as a document with Your written signature on it; and (iii) An electronic communication, or any computer printout of it, is valid proof of the validity of the original document of the electronic communication.

22.14. Permission to Use Logo and Copyrighted or Trademarked Content. You grant Zap5 Networks a non-exclusive license to use your logo, company name and/or other intellectual property under Zap5 Network's website, clientele portfolio and other marketing material during the Term of the Agreement and thereafter. Zap5 Networks shall not be allowed to use or reproduce the Licensed Material for any other purpose for any reason whatsoever without the

express prior written consent of Licensor. Licensor shall retain all rights in and to the Licensed Material during the Term of the Agreement and thereafter.