

TERMS OF SERVICE

SCHEDULE 'A' SERVER MANIA TERMS OF SERVICE

By these Terms of Service, Server Mania Inc. ("Server Mania" or the "Company"), an Ontario Corporation, and the subscriber (the "Subscriber"), as identified at the top of the first page of the term sheet portion of this Agreement (the "Term Sheet"), agree as follows:

1. Definitions

1.1 "Base Monthly Service Fee" consists solely of the base monthly service fee paid by a Subscriber for the selected Server Mania Services and excludes all other fees which might be charged to the Subscriber, including but not limited to, set-up fees, fees for local loop, space rental fees, charges for additional services such as management services, incremental bandwidth usage or hard drives beyond that which are available without additional charge under Server Mania standard rates, hourly support and other types of optional additional Services.

"Services" shall include any one or more of the following:

- a. **Hosting Service, Dedicated Server or Hosting Service:** a type of internet hosting in which the Subscriber leases an entire server not shared with anyone else. This offers more flexibility than shared hosting as organizations are able to have full control over the server(s), included but not limited to, a choice of operating system and hardware;
- b. **Virtual Private Server ("VPS") or Hybrid Server:** a virtual machine sold as a service by an Internet hosting service. A VPS runs its own copy of an operating system and Subscribers may have super-user-level access to that operating system ("OS"), allowing them to install almost any software that runs on that OS. In many respects, a VPS is functionally equivalent to a dedicated physical server and being software-defined is more easily created and configured to a Subscriber's wants and needs. While a VPS is more affordable than its equivalent physical server, a VPS shares its underlying physical hardware with other VPSs, which may result in lower performance depending on the workload of any other executing virtual machines.
- c. **Cloud Servers:** a type of Internet-based computing that provides shared computer processing resources and data to computers and other devices on demand. It is a model for enabling ubiquitous, on-demand access to a shared pool of configurable computing resources (such as computer networks, servers, storage, applications and services), which can be rapidly provisioned and released with minimal management effort. Cloud servers and storage solutions provides Subscribers and enterprises with various capabilities to store and process their data in either privately owned or third-party data centers that may be located far from the Subscriber – ranging in distance from across the city to across the world. Cloud servers relies on sharing of resources to achieve coherence and economy of scale, similar to a utility, like the electricity grid over an electricity network.

- d. **Colocation:** also known as a “Carrier Hotel”, is a type of data center where equipment, space and bandwidth are available for rent to retail customers. Colocation facilities provide space, power, cooling and physical security for the server, storage and networking equipment of other firms, and connects the server and equipment to a variety of telecommunications and network providers with a minimum of cost and complexity.
- e. **Managed Hosting:** applies to both physical dedicated servers, hybrid servers and virtual servers, as many subscriber companies prefer a hybrid/combination of physical and virtual hosting services.
- f. **IP Transit/ Bandwidth Service:** is a performance-tuned global IP system with dense connectivity across all major fiber hubs in Buffalo and Montreal data centers. IP Transit on both the IPv4 and IPv6 standards allows for native IPv6 connectivity in both locations. is a performance-tuned global IP system with dense connectivity across all major fiber hubs in Buffalo and Montreal data centers. IP Transit on both the IPv4 and IPv6 standards allows for native IPv6 connectivity in both locations.

The Services, unless otherwise stated in the Agreement, shall be managed by the Subscriber.

“**Subscriber**” shall mean a corporation or an individual over the age of eighteen (18), acting for commercial or business purposes, named on the invoice and responsible, unless otherwise agreed with Server Mania, for paying the charges for the Services provided under the TOS and entitled to receive any notice and information relating to these TOS or the Services.

“**Terms of Service (“TOS” or “Agreement”)**” shall mean the agreement in effect from time to time between Server Mania and the Subscriber, which is subject to these TOS and any other document or form that may be designated by Server Mania from time to time in accordance herewith as forming part of these TOS.

1.2 Use of Server Mania Services constitutes acceptance and agreement to Server Mania’s policies, being its Acceptable Usage Policy (“AUP”) and its Privacy Policy, attached hereto as Schedule ‘A’ and Schedule ‘B’ respectively, as well as Server Mania’s TOS.

1.3 All provisions of this Agreement are subject to the TOS, Privacy Policy and AUP of Server Mania. The AUP and Privacy Policy may be changed from time to time at the discretion of the Company. The Subscriber understands that changes to the AUP by the Company shall not be grounds for early termination of this Agreement or non-payment.

1.4 This Agreement shall be construed in all respects in accordance with the laws of the province of Ontario and the federal laws of Canada, as the case may be.

1.5 Disclosure to Law Enforcement: The AUP specifically prohibits the use of Server Mania’s Services for illegal activities. Therefore, the Subscriber acknowledges and agrees that the Company may disclose any and all Subscriber information, including but not limited to assigned IP numbers, account history and account use to Federal law enforcement agents without consent or notification to the Subscriber if Server Mania is required to do so by law. Server Mania will not disclose Subscriber information to third-party or international agencies unless a Federal court order has been obtained. Server Mania shall have the right to terminate all Services set forth in this Agreement should the Subscriber use the Services for illegal purposes.

2. Term

The Term of this Agreement will begin on the Commencement Date (as defined on the Term Sheet) and shall remain in full force and effect for the duration of a twelve (12) month Term, as indicated on page one of the Agreement.

3. Renewal

Unless notice in writing is received by Server Mania prior to the end of the Term, this Agreement will automatically be renewed for the next billing period at the rate applicable for the Services included in the Agreement.

4. Service Rates

The Subscriber acknowledges that the nature of the Services furnished by the Company and the initial rates and charges have been communicated to the Subscriber, as outlined on the Term Sheet of this Agreement. The Subscriber agrees to pay all fees and charges specified in this Agreement and relating thereto, on a monthly basis, in advance of or on the established due date of each month. The Subscriber is aware that the Company may prospectively change their specified rates and charges from time to time. Any promotional offers are contingent upon the Company achieving and maintaining its cost of service goals, including but not limited to, rates charged to the Company by its suppliers.

5. Payment

The Subscriber shall pay Server Mania all fees due upon receipt of an invoice specifying the amounts due ("Fees"). Fees are due and payable by the Subscriber within seven (7) days of the date of the invoice. The Acceptance by the Company of late or partial payments shall not waive any of Server Mania's rights to collect the full amount due under this Agreement.

Establishment of the Services is dependent upon receipt by the Company of payment of stated charges. Subsequent payments are due on the anniversary date of the month for that month's Services. All accounts and Services provided by Server Mania to Subscribers are subject to the current tax rate as imposed by the province of Ontario and Canada.

6. Payments and Fees

Services will be suspended on Subscriber accounts that reach five (5) days past the invoice due date and a ten percent (10%) late fee will be added to the outstanding balance.

Once an account becomes five (5) days overdue, Services will enter into a 'suspended state'. In the 'suspended state' Subscriber data will not be in jeopardy. Services will be terminated on accounts that reach ten (10) days past due. Once a Cloud or VPS Service enters the 'terminated state', data will be lost as the entire virtual instance is automatically deleted. Dedicated servers entering into a 'terminated state' are in high-risk of data being lost (example: in the event of a server being re-provisioned). If Server Mania suspends or terminates the Services, the Subscriber will continue to be responsible for the payment of any amount owing on their account to Server Mania. If the Subscriber has pre-paid their account the pre-paid amount will be forfeit.

7. Refund and Disputes

All payments to Server Mania are non-refundable. This includes the one time setup fee and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within ten (10) days of the time the dispute occurred. If the Subscriber disputes a charge made to his/her/its credit card that, in the Company's sole discretion, is a valid charge under the provisions of the TOS and/or AUP, the Subscriber agrees to pay Server Mania an "Administrative Fee" of no less than One Hundred Dollars (\$100).

8. Failure to Pay

The Company may temporarily deny Services to the Subscriber by placing the Subscriber's account into a suspended state or terminate this Agreement upon the failure of the Subscriber to pay charges when due. Such denial or termination will not relieve the Subscriber of his/her/its responsibility to pay all accrued charges.

9. Account Cancellation

All requests to cancel accounts must be made from the Subscriber's client portal. Thirty (30) days' notice must be provided to Server Mania for monthly Subscriber Terms and sixty (60) days' notice must be provided for any Subscriber Term greater than one month in length. Upon the cancellation notice, Server Mania has the right to reclaim the server immediately.

10. Subscriber Acknowledgements

The Subscriber acknowledges that the Services provided are of such a nature that the Services can be interrupted for many reasons other than the negligence of the Company and that damages resulting from any interruption of the Services are difficult to ascertain. Therefore, the Subscriber agrees that the Company shall not be liable for any damages arising from such causes beyond the direct and exclusive control of the Company. The Subscriber further acknowledges that the Company's liability for its own negligence may not in any event exceed an amount equivalent to charges payable by the Subscriber for the Services during the period damages occurred. In no event shall the Company be liable for any special or consequential damages, loss or injury.

11. Support Boundaries

Server Mania provides 24x7 technical support to its Subscribers for managed and non-managed Services. The Company limits its technical support to the Services, being its area of expertise. The following are Server Mania's guidelines when providing support: Server Mania provides support related to the Subscriber's hosting's physical functioning. Server Mania does not offer technical support for application specific issues such as cgi programming, html or any other such issue. Server Mania does not provide technical support for the Subscriber's customers. If the Subscriber has email access, Server Mania encourages the Subscriber to email support@servermania.com for assistance. Lastly, the Knowledge Base in the Server Mania program the Subscriber is using may have the answer to the Subscriber's question. As such, Server Mania encourages the Subscriber to investigate these resources before calling tech support.

With respect to managed Services, Server Mania will not interfere with the Subscriber's developed software. The scope of support boundaries for managed Services will be defined on an individual Subscriber basis and will be outlined on the Term Sheet portion of this Agreement.

Support boundaries for both managed and unmanaged Services can also be found on the Server Mania website.

12. Inbound/Outbound DDoS Attacks

Distributed Denial of Service Attack ("DDoS") is a type of denial of service attack in which an attacker uses malicious code installed on various computers to attack a single target. An attacker may use this method to have a greater effect on the target than is possible with a single attacking machine. As a Server Mania user, the Subscriber is ultimately responsible for making sure that his/her/its account is secured and that no root kits or viruses are on his/her/its server.

Violation of this Inbound/Outbound DDoS policy will result in severe penalties. Upon notification of an alleged violation of this policy, whether the Subscriber's server has become the victim of a DDoS Attack or the Subscriber is deliberately performing the DDoS, Server Mania will invoice the Subscriber Five Dollars (\$5) per DDoS incident unless client subscribes to a DDoS protection package and initiate an immediate investigation. During the investigation, Server Mania may restrict the Subscriber's access to the network to prevent further violations. If a Subscriber is found to be in violation of Server Mania's DDoS policy, Server Mania may, at its sole discretion, restrict, suspend or terminate the Subscriber's account.

As Server Mania's Subscribers are ultimately responsible for the actions of their clients over the Server Mania network, it is advisable that Subscribers develop a similar or stricter policy for their respective clients.

13. Unsolicited Commercial Email

Server Mania takes a zero-tolerance approach to the sending of Unsolicited Commercial Email ("UCE" or "SPAM") over its network. Very simply this means that Subscribers of the Company may not use or permit others to use the Server Mania network to transact in UCEs. Subscribers of Server Mania may not host or permit the hosting of sites or information that is advertised by UCEs from other networks. Violations of this policy carry severe penalties, including termination of the Services.

Violation of Server Mania's SPAM policy will result in severe penalties. Upon notification of an alleged violation of its SPAM policy, Server Mania will initiate an immediate investigation (within 48 hours of notification). During the investigation, Server Mania may restrict Subscriber's access to the network to prevent further violations. If a Subscriber is found to be in violation of Server Mania's SPAM policy, Server Mania may, in its sole discretion, restrict, suspend or terminate the Subscriber's account. Further, Server Mania reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. Server Mania will notify law enforcement officials if the violation is believed to be a criminal offense.

First violations of this policy will result in an "Administrative Fee" of Two Hundred and Fifty Dollars (\$250.00) and the Subscriber's account will be reviewed for possible immediate termination. A second violation will result in an "Administrative Fee" of Five Hundred Dollars (\$500.00) and immediate termination of the Subscriber's account. Subscribers who violate this policy agree that in addition to these "Administrative" penalties, they will pay "Research Fees" not to exceed One Hundred and Seventy-Five Dollars (\$175.00) per hour to account for the time Server Mania personnel will have to spend to investigate the matter. **SUBSCRIBERS ARE NOT TO SEND SPAM** from their servers.

As Server Mania's Subscribers are ultimately responsible for the actions of their clients over the Server Mania network, it is advisable that Subscribers develop a similar or stricter policy for their clients.

Any Subscriber hosting websites or services on their server that support spammers or cause any of Server Mania's IP space to be listed in any of the various Spam Databases will have their server immediately removed from the Server Mania network. The server will not be reconnected until such time that the Subscriber agrees to remove ANY and ALL traces of the offending material immediately upon reconnection and agrees to allow Server Mania access to the server to confirm that all material has been COMPLETELY removed. Severe violations may result in immediate and permanent removal of the server from the Server Mania network without notice to the Subscriber. Any server guilty of a second violation WILL be immediately and permanently removed from the Server Mania network without notice.

14. Network Issues

a. IP Address Ownership: If Server Mania assigns a Subscriber an Internet protocol (“Internet Protocol” or “IP”) address for the Subscriber’s use, the right to use that Internet Protocol address shall belong only to Server Mania and the Subscriber shall have no right to use that Internet Protocol address except as permitted by Server Mania, in its sole discretion, in connection with the Services during the term of this Agreement. Server Mania shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to the Subscriber by Server Mania and Server Mania reserves the right, in its sole and absolute discretion, to change or remove any and all such Internet Protocol numbers and addresses. Server Mania’s allocation of IP addresses is limited by American Registry for Internet Numbers (“ARIN”) new policies. These new policies state that the use of IP addresses for IP based virtual hosts will not be accepted as justification for new IP addresses. What this means to a Subscriber is that a Subscriber **MUST** use name-based hosting where possible. Server Mania will periodically review IP address usage, and if the Company finds that Subscribers are using IP addresses where name-based hosting could be used, Server Mania will revoke authorization to use those IP addresses that could be used with name-based hosting.

b. System and Network Security: Subscribers are prohibited from violating or attempting to violate the security of the Server Mania network. Violations of system or network security may result in civil or criminal liability. Server Mania will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Subscribers who are involved in such violations. These violations include, without limitation:

- i. Accessing data not intended for such Subscriber or logging into a server or account, which such Subscriber is not authorized to access;
- ii. Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization;
- iii. Attempting to interfere with the Services to any Subscriber, host or network, including, without limitation, via means of overloading, “flooding”, “mail bombing” or “crashing”;
- iv. Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting;
- v. Taking any action in order to obtain Services to which such Subscriber is not entitled; and
- vi. If a Subscriber’s services are abusing the Server Mania network, Server Mania has the right to suspend and/or terminate the Subscriber’s server without notice and an additional “Administrative Fee” may apply.

15. Notification of Violation

a. Server Mania is under no duty to look at each Subscriber’s activities to determine if a violation of the AUP has occurred, nor does Server Mania assume any responsibility through its AUP to monitor or police Internet-related activities.

b. Limits on Account Privileges: Any Subscriber, which Server Mania determines to have violated any element of the Company’s AUP, shall receive an email, warning him/her/it of the violation. The Services may be subject, at Server Mania’s discretion, to a temporary suspension pending a Subscriber’s agreement in writing, to refrain from any further violations.

c. Account Suspension: Subscribers that Server Mania determines to have committed a second violation of any element of its AUP shall be subject to immediate suspension or termination of Services without further notice.

d. Loss of Preferred Member Status: Server Mania reserves the right to drop the section of IP space involved in SPAM or denial-of-service complaints if it is clear that the offending activity is causing great harm to parties on the Internet such as, if open relays are on a Subscriber's network or on a Subscriber's customer's network or if denial of service attacks are originating from a Subscriber's network. In certain rare cases, Server Mania may have to take the aforementioned action before attempting to contact the Subscriber. If Server Mania does take action, the Company will contact the Subscriber at its earliest convenience thereafter.

16. Suspension of Service or Cancellation

Server Mania reserves the right to suspend network access to any Subscriber if, in the judgment of the Server Mania network administrators, the Subscriber's server is the source or target of the violation of any of the terms of the Company's AUP. If inappropriate activity is detected, all accounts of the Subscriber in question will be deactivated until an investigation is complete. Prior notification to the Subscriber is not assured. In extreme cases, law enforcement will be contacted regarding the activity. The Subscriber will not be credited for the time the Subscriber's machines are suspended for any reason, including late payment of Fees in accordance with section 6 herein.

17. Server Mania Availability

17.1 Due to Server Mania's extensive network infrastructure, Server Mania can provide its Subscribers with a one hundred percent (100%) network uptime guarantee. In the event that any Services do not experience one hundred percent (100%) uptime in a given month, Server Mania will credit five percent (5%) of the Subscriber's Base Monthly Service Fee for the first hour of downtime and subsequently an additional five percent (5%) for each hour of downtime thereafter with a maximum of an eighty percent (80%) refund. Any scheduled Emergency Downtime taken by Server Mania will not apply to this downtime calculation, nor to the credit calculation. This guarantee applies to Server Mania's network uptime and not to any hardware, software or Services running on a Subscriber's server.

Account credits will be issued when a credit request is made by the Subscriber. All requests for credits must be made within three (3) days of the incident. All requests for credits must be made by creating a support ticket at <https://surge.servermania.com>.

17.2 Save and except for any direct negligence on the part of Server Mania, the Subscriber agrees that the Company cannot be held liable for server downtime or data loss in the following emergency downtime ("Emergency Downtime") circumstances:

- a. Circumstances beyond Server Mania's reasonable control, including without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, suppliers or power used in or equipment needed for provision of the Server Mania Services;
- b. Failure to access circuits to the Server Mania network, unless such failure is caused solely by Server Mania;
- c. Scheduled maintenance and emergency maintenance and upgrades;
- d. DNS issues outside the direct control of Server Mania;

- e. False Agreement breaches reported as a result of outages or errors of any Server Mania uptime monitoring system; or
- f. Subscriber acts or omissions (or acts or omissions of others engaged or authorized by Subscribers), including without limitation, any negligence, willful misconduct or use of the Server Mania Services in breach of Server Mania's TOS or the Company's AUP or Privacy Policy.

18. Policy Amendments

Server Mania reserves the right to amend its policies at any time. All sub-networks, resellers and managed servers of Server Mania must adhere to the existing Server Mania policies. Failure to follow any term or condition will be grounds for immediate cancellation. The Subscriber will be held responsible for the actions of his/her/its clients in the manner described in these TOS. Therefore, it is in the Subscriber's best interest to implement a similar or stricter TOS for his/her/its own clients.

19. Indemnification

Server Mania wishes to emphasize that in agreeing to the Server Mania TOS, AUP and Privacy Policy, the Subscriber agrees to defend and indemnify Server Mania, its successors, affiliates and agents for any violation of the TOS, AUP and/or Privacy Policy that results in any claims, damages, losses or expenses (including, without limitation, legal fees and costs) incurred by Server Mania in connection with all claims, suits, judgments and causes of action. This means that if Server Mania is sued because of a Subscriber's or a customer of a Subscriber's activity, the Subscriber will pay any damages awarded against Server Mania, plus all costs and legal fees.

20. Limitations of Liability

SERVER MANIA, ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS (IT BEING ACKNOWLEDGED BY THE SUBSCRIBER THAT FOR THE PURPOSES OF THIS SECTION ONLY, SERVER MANIA IS CONTRACTING AS AGENT ON BEHALF OF ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS) SHALL NOT BE LIABLE TO THE SUBSCRIBER OR ANY OTHER PERSON (EXCEPT FOR PHYSICAL INJURIES AS A RESULT OF SERVER MANIA'S NEGLIGENCE) FOR (1) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOSSES INCLUDING, WITHOUT LIMITATION, PROPERTY DAMAGE, LOSS OF DATA, LOSSES RESULTING FROM A THIRD PARTY'S UNAUTHORISED ACCESS TO DATA, LOSS OF PROFIT, LOSS OF EARNINGS, FINANCIAL LOSS, LOSS OF BUSINESS OPPORTUNITY, PERSONAL INJURY, DEATH OR ANY OTHER DAMAGE OR LOSS HOWEVER CAUSED, RESULTING DIRECTLY OR INDIRECTLY, OR RELATING, IN ANY MANNER, TO THE TERMS AND CONDITIONS HEREIN, THE SERVER MANIA SERVICES, OR THE SUBSCRIBER'S COMPUTER SYSTEM; OR (2) DEFAMATION OR COPYRIGHT INFRINGEMENT THAT RESULTS FROM MATERIAL TRANSMITTED OR RECEIVED OTHER THAN THE SERVER MANIA'S SERVICES. THESE LIMITS APPLY TO ANY ACT OR OMISSION OF SERVER MANIA, SERVER MANIA'S EMPLOYEES, OR AGENTS, WHICH WOULD OTHERWISE BE A CAUSE OF ACTION IN CONTRACT, TORT OR ANY OTHER DOCTRINE OF LAW AND IN NO EVENT SHALL SERVER MANIA'S LIABILITY TOWARD THE SUBSCRIBER EXCEED THE TOTAL AMOUNT PAID TO SERVER MANIA BY THE SUBSCRIBER FOR ANY AFFECTED SERVICE, DURING THE 3-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. THIS SECTION SHALL CONTINUE TO APPLY NOTWITHSTANDING EXPIRATION OR TERMINATION OF THESE TOS.

21. No Warranties

THE SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE SERVICES ARE PROVIDED BY SERVER MANIA "AS IS" AND "AS AVAILABLE" AND, TO THE EXTENT PERMITTED BY LAW, WITHOUT WARRANTY BY SERVER MANIA OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT, OR THOSE ARISING FROM A COURSE OF DEALING OF USAGE OR TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SERVER MANIA SHALL HAVE NO LIABILITY WHATSOEVER TO ANY SUBSCRIBER FOR: (1) ANY INTERRUPTIONS OR DISRUPTIONS TO THE SERVICES OR ANY OTHER DAMAGES SUFFERED BY THE SUBSCRIBER WHICH ARE CAUSED DIRECTLY OR INDIRECTLY BY ANY FAILURES OF THE SERVICES OR OTHER EQUIPMENT; (2) ANY POWER FAILURES; (3) ANY ACTS OR OMISSIONS OF THE SUBSCRIBER OR ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS INCLUDING, WITHOUT LIMITATION, DEFAMATION OR COPYRIGHT INFRINGEMENT; (4) ANY DISRUPTION OF ANY PART OF THE EQUIPMENT USED TO PROVIDE THE SERVICES BY PARTIES OTHER THAN SERVER MANIA; (5) ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS ARISING FROM OR IN CONNECTION WITH THE SUBSCRIBER'S USE OF THE SERVICES OR OTHER EQUIPMENT; (6) ANY EVENT OF FORCE MAJEURE, AS DEFINED IN THIS USER AGREEMENT; (7) ANY EVENT OF FORCE MAJEURE, AS DEFINED IN SECTION 20(g) OF THESE TOS; OR (8) ANY SUSPENSION OR TERMINATION OF THE SUBSCRIBER'S SERVICES.

22. Arbitration

Any dispute between the parties whether arising during the period of this Agreement or at any time thereafter which attaches upon the validity, construction, meaning, performance or effect of this Agreement or the rights and liabilities of the parties or any matter arising out of or connected with this Agreement shall be subject to arbitration and pursuant to the Arbitration Act (Ontario) and the decision shall be final and binding upon the parties hereto and shall not be subject to appeal.

The arbitration shall be carried out by a single arbitrator if the parties can agree upon one, failing which, such arbitrator as shall be appointed by a judge of the Superior Court of Justice (Ontario) at St. Catharines, upon the application of any of the parties and the said Judge shall be entitled to act as such arbitrator if he or she shall so desire. The arbitration shall take place in the City of St. Catharines and the arbitrator shall fix the time and place in such Municipality for the purpose of hearing such evidence and representation as the parties or any of them may present.

The decision of the arbitrator both in procedure and the conduct of the parties during the proceedings and the final determination of the issue shall be binding upon the parties hereto and no appeal shall lie therefrom. The costs of the arbitration shall be borne by the parties hereto as may be specified in the decision of the arbitrator. Submission to arbitration pursuant to the provisions of this section shall be a condition precedent to the bringing of an action with respect to this Agreement.

23. Prevailing Terms

The terms and conditions of any other form, purchase order or invoice shall incorporate only the TOS of this Agreement and the terms and conditions contained in the Term Sheet executed by the Subscriber shall supersede any conflicting terms and conditions contained in these TOS.

24. Miscellaneous Provisions

- a. Contact Information:** The Subscriber must provide Server Mania with, and keep current, good contact information for the Subscriber. E-mail, fax and telephone contacts are used, in that order of preference.
- b. Waiver:** A waiver by the Company of any breach of any provision of this Agreement by the Subscriber shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof.
- c. Assignment:** The Subscriber shall not transfer or assign this Agreement without the prior written consent of the Company. The Company may assign this Agreement at any time without consent from or notice to the Subscriber.
- d. Entire Agreement:** This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and there are no representations, warranties, covenants, agreements or collateral understandings, oral or otherwise, expressed or implied, affecting this instrument which are not expressly set forth herein.
- e. Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada, as applicable.
- f. Severability:** In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of the Agreement.
- g. Force Majeure:** Other than with respect to the payment of fees to Server Mania, in no event shall either party have any liability for failure to comply with this Agreement, if such failure results from the occurrence of any contingency beyond the reasonable control of the party including, without limitation, strike or other labour disturbances, riot, theft, flood, lightning, storm, any act of God, power failure, war, national emergency, interference by any government or governmental agency, embargo, seizure, or enactment of any law, statute, ordinance, rule or regulation.
- h. Third Party Beneficiaries:** Except as otherwise specifically stated in this Agreement, the provisions of this Agreement are for the benefit of the parties hereto and not for any other person.
- i. Currency:** Except as otherwise provided in this Agreement, all monies referred to in the Agreement shall be in US currency.
- j. Language:** The parties hereto have required that this Agreement and all documents or notices resulting therefrom or ancillary thereto be drawn up in the English language.
- k. Time of the Essence:** Time shall be of the essence of the Agreement and of each and every provision contained in it. No extension or variation of the Agreement will operate as a waiver of this provision.
- l. Agency:** No agency, partnership, joint venture or employment is created as a result of this Agreement and the Subscriber does not have any authority of any kind to bind Server Mania in any respect whatsoever.
- m. Headings/Gender:** The captions contained in this Agreement are for convenience only and are not considered as part of the Agreement and do not in any way limit or amplify the terms or provisions of the Agreement. Words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.

n. **Enurement:** This Agreement shall be binding upon and enure to the benefit of the parties and their respective legal successors and permitted assigns.

o. **Server Mania takes no responsibility** for any material input by others and not posted to the Server Mania network by Server Mania. Server Mania is not responsible for the content of any other websites linked to the Server Mania network; links are provided as Internet navigation tools only. Server Mania disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person or party's violation of this policy.

25. Survival of Obligations

The provisions of sections 3, 4, 5, 6, 16, 19, 20, 21, 22, 23 and the miscellaneous provisions under section 24.

26. Responsibility for Content

The Subscriber, as Server Mania's customer, is solely responsible for the content stored on Server Mania's Services.