

## **Terms and Conditions**

This policy represents the Malama Web Design and Hosting Terms of Service ("TOS") in its entirety and supersedes any other written or oral policy. This policy defines the terms of service all Malama Web Design and Hosting customers agree to when they sign-up for any of the Malama Web Design and Hosting web site hosting services. Malama Web Design and Hosting reserves the exclusive right to change, amend or revise any portion of this TOS policy at any time, with or without written notice to our customers.

Customers using any services offered by Malama Web Design and Hosting agree to be obligated by and must comply with all policies in this TOS or must otherwise opt out of and cancel their web hosting service with Malama Web Design and Hosting. Malama Web Design and Hosting retains the sole discretion to make judgment regarding any violation by any Malama Web Design and Hosting customer and may take action against any customer deemed to be in violation of these terms including the cancellation of any customer.s services without refund and/or, if deemed appropriate, be legally prosecuted.

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## **General Provisions**

In consideration for Malama Web Design and Hosting maintaining one or more accounts (each "Account"), you, as the Malama Web Design and Hosting customer, agree to the following terms of service.

## **Definitions**

- "We" "Us" or "Provider" or "Malama Web Design and Hosting." .Malamaweb.Com.
- "You" "Your" "Client" "Customer" or "Member" - Each person or entity who applies for internet service or is a designate of anyone who applies for internet service.

## **Disclaimer of Warranty**

The Internet and web site hosting relies on a complex network of hardware, software, network services and providers of information. Due to the need for an aggregate of all of these providers and service companies working properly not all services may be available to you at all times.

Malama Web Design and Hosting however, offers a 99.9% uptime guarantee. This is valid for only the Malama Web Design and Hosting servers and our primary co-location internet connection. Malama Web Design and Hosting shall pursue partnerships with all tier-1 resource and channel available to maintain maximum uptime, however, Malama Web Design and Hosting is not responsible for any down time caused by any provider's hardware or network malfunction which is outside of Malama Web Design and Hosting capability to directly correct. Malama Web Design and Hosting clients are diverse and their web sites and the function of those web sites are diverse and Malama Web Design and Hosting cannot be held responsible for any service interruption due to client's error, including but not limited to spamming, the target of a DDOS attack, or any other internet or cyber attack.

Malama Web Design and Hosting MAKES NO EXPRESS OR IMPLIED WARRANTIES (INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE) WITH RESPECT TO THE SERVICES IT PROVIDES. Neither Malama Web Design and Hosting nor any one else involved in the provision of Service is liable to you or any third-party for direct or indirect damages resulting from the use, non-use of services provided herein, whether or not such damages resulted from the negligence of Malama Web Design and Hosting, even if Malama Web Design and Hosting has been advised to the possibility of such damages.

### **Limitation of Liability**

IN NO EVENT SHALL Malama Web Design and Hosting BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND DAMAGES RELATED TO CORRUPTION OR DELETION OF WEBSITE CONTENTS, EMAIL DATA AND OR DATABASE CONTENTS) ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE Malama Web Design and Hosting. SERVICES (INCLUDING, BUT NOT LIMITED TO, INOPERABILITY OF Malama Web Design and Hosting. SERVERS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF Malama Web Design and Hosting HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL Malama Web Design and Hosting. MAXIMUM LIABILITY EXCEED THE TOTAL AMOUNT PAID BY YOU TO Malama Web Design

and Hosting FOR THE SERVICES DURING THE PRIOR TWELVE (12) MONTHS. TO THE EXTENT APPLICABLE LOCAL LAW DOES NOT ALLOW THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, Malama Web Design and Hosting. LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW

### **Indemnification**

You agree to indemnify, defend and hold Malama Web Design and Hosting and its affiliates, directors, officers, employees and agents harmless from and against any liabilities, losses, damages or costs, including reasonable attorneys' fees, resulting from any third-party claim, action, dispute or demand related to your use of the Services, your violation of any of the provisions of this Agreement or from your placement or transmission of any materials or content onto Malama Web Design and Hosting servers. Such liabilities may include, but are not limited to, those arising from the following: (a) with respect to your business, (i) infringement or misappropriation of any intellectual property rights; (ii) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity; or (iii) spamming, or any other offensive, harassing or illegal conduct or violation of the acceptable uses described herein or anti-spam policy; (b) any damage or destruction to Malama Web Design and Hosting equipment or to any other account holder, which damage is caused by or otherwise results from acts or omissions by you, your representative(s) or your designees; (c) any personal injury or property damage arising out of your activities related to the Services, unless such injury or property damage is caused solely by Malama Web Design and Hosting gross negligence or willful misconduct; and (d) any other damage arising from your equipment or your business.

### **CHOICE OF LAW**

This Agreement shall be interpreted under the laws of the State of California without regard to any conflict of laws provisions. Any action between the parties to this agreement for the breach of this agreement or any action or claim in any way relating thereto shall be venued in the Superior Court of the State of California, County of Ventura. The parties to this agreement hereby consent to jurisdiction in that court and agree to accept service by mail and hereby waive any defense of any kind related to jurisdiction or venue.

### **Services Provided by Malama Web Design and Hosting**

Malama Web Design and Hosting will provide Internet server rental ("the Service") to its

members for the express purpose of allowing customers to provide http Internet content to the general public. The Service allows Malama Web Design and Hosting members to maintain Internet websites, receive and maintain e-mail accounts and access web space via FTP to upload files for their websites. Malama Web Design and Hosting members will use the provided services in a manner consistent with any and all applicable laws. Malama Web Design and Hosting provides the Services exclusively and makes no effort to edit, control, monitor or restrict the content of data other than as necessary to provide such Services. Malama Web Design and Hosting reserves the right to refuse service to potential and/or existing customers to protect its existing paying customers. If any of the below violates are committed, Malamaweb.com can terminate client's account without notification.

Malamaweb.Com provides timely web site hosting support to our clients through emails, chat and phones. By accepting your client contract agreement with Malamaweb.Com You agree not to abuse whether verbally or physically or whether in person, via email, live chat or telephone or otherwise (a) any other customer of Malamaweb.Com and any employee or contractor of Malamaweb.Com .

- **Client Content:**

Client agrees that web pages and files uploaded to servers will not violate any state, national or foreign laws or regulations; infringe on any intellectual property rights of Malama Web Design and Hosting or any third party; be defamatory, slanderous or trade libellous; be threatening or harassing; be discriminatory based on gender, race, age; promote hate; or contain viruses or other computer programming defects which result in damage to Malama Web Design and Hosting or any third party. Customers may not run IRC, bots or clients. Clients may not use Malama Web Design and Hosting servers for file storage unrelated to the client's web site, storage Space is for active web site file pages only. Malamaweb.com shared hosting account holders may not act as a reseller, which means that clients may not host any web sites in their addon domains that are not domains owned by the client on record at Malama Web Design and Hosting. Unacceptable uses also include: Bulk unsolicited emailing, unsolicited e-mailings, newsgroup spamming, child pornography, hardcore pornography or links to such sites, copyrighted MP3, copyrighted music, copyrighted video, illegal content, copyright infringement, trademark infringement, warez, cracks, software serial numbers. Malama Web Design and Hosting will be the sole and final arbiter as to

what constitutes a violation of this policy. Malama Web Design and Hosting does not normally monitor the contents of clients servers, however if suspicion occurs, Malama Web Design and Hosting reserves the right to investigate and terminate the clients subscription to the service.

- **Unlimited Features:**

*What do you mean by "unlimited disk space and bandwidth/data transfer"*

We do not set limits on the disk space and bandwidth (data transfer) that we provide in plans that are marked "Unlimited". We want you to have the resources available to you to build a great online presence.

Even though we want you to succeed, we need to ensure that we're providing all of our customers with optimum service. As such we do require all of our customers to be fully compliant with our Excessive Resource User Policy/Terms of Service and utilize disk space and bandwidth related to normal operation of a personal or small business web site.

If a customer's hosting account is found to have violated the client content, excessive resource user policy and/or is storing files for archiving purposes, the contents will be removed and while we make best effort to contact customers before hand, can occur without notice.

- **Excessive Resource User Policy:**

Resources are defined as bandwidth, memory and/or processor utilization. Malama Web Design and Hosting offers a shared web hosting service in which environment customers may share resources with other customers, therefore it is imperative that Malama Web Design and Hosting control any excessive usage by customers so that they do not disrupt the service quality of other customers using the same resources. A website is considered using "Excessive amounts of resources" when it monopolies the resources available using 8% or more of system resources for longer than 60 seconds. There are numerous issues that could cause such problems, including but not limited to: cgi scripts, FTP, HTTP, etc. Any site that consumes over the account limit of bandwidth is also considered an "excessive resource" user. In the event of excessive resource usage Malama Web Design and Hosting may act in the following manner: if the

excessive usage may cause a disruption of service to any other customer, Malama Web Design and Hosting may suspend that customer's account prior to notify that customer, Malama Web Design and Hosting may also contact the .excessive usage. customer prior to taking any action if Malama Web Design and Hosting feels that the excessive usage will not interfere with the service of any other customer. Client suspensions prior to notification by Malama Web Design and Hosting is rare and is only implemented in extreme circumstances and is intended to prevent the misuse of our servers. The client whom is using "excessive resources" may be asked to upgrade his/her package to one of our dedicated server packages to reduce their excessive usage utilization in the future. Malama Web Design and Hosting will be the sole and final arbiter as to what constitutes a violation of this policy.

- **No "Spam":**

UCE/UBE or "Spam" originating from a server located on our network or associated with a Malama Web Design and Hosting server is not tolerated. This includes any e-mail that promotes web sites hosted on a server located on the Malama Web Design and Hosting network but is sent from an e-mail address not associated with that Malama Web Design and Hosting account. Client shall not use their Malama Web Design and Hosting services for chain letters, junk mail, bulk-email, or any use of distribution lists to any person who has not given specific permission to be included in such a process. Malama Web Design and Hosting reserves the right to deactivate or terminate any account(s) upon any indication of such activity without notice.

- **Excessive Exploits**

Malamaweb.com allows 3rd party scripts to be uploaded/installed from our auto-installer or manually (those scripts that are/aren't included in the auto-installer) on your web hosting account. It is the responsibility of our web hosting clients to maintain the latest exploit free version of the scripts. If a script that our web hosting clients uploads to our servers is found to have security lapses and allows a third party to "hack", "exploit", "deface" their site(s) it is the responsibility of our clients to either remove that script or Malamaweb.Com reserves the right to terminate that clients' account and provide them with a prorated refund.

- **False Information:**

Customer agrees not to post false or inaccurate information to news groups in violation of the news groups rules and regulations. If any news groups or service provider contact Malama Web Design and Hosting concerning unethical, false or unlawful activities by you, Malama Web Design and Hosting reserve the right to suspend or terminate your service with or without notice.

- **Licensed Software Only:**

Client agrees to use only properly licensed third party software in connection with Client's use of the Services.

- **Back-Up Files:**

Malama Web Design and Hosting provides the tools needed to create back ups of account data. It is the responsibility of the customer to keep up-to-date archives of their backed up data. Malama Web Design and Hosting does not back-up, or keep records or copies of our clients web site files and is not responsible for any loss of data.

### **Payment, Renewal, Cancellations**

- **Payment Obligations:**

Full payment is required in advance before hosting service is established. Malama Web Design and Hosting sends out invoices that are due every pay period. You are given fifteen (15) days to fully pay the invoice.

You warrant and represent that the information you supply in the Order Form (or other information that Malama Web Design and Hosting may require) is accurate and truthful. All payment-due notices will be sent by e-mail. No bills or invoices will be sent by postal mail or fax. If payment was not received by the due-date, your account will be suspended. It is the client's responsibility to ensure that payment is made to Malama Web Design and Hosting prior to the renewal date and although Malama Web Design and Hosting sends renewal notices to our customers prior to their renewal date, because of the ability for a customer to change their contact email addresses without notifying Malama Web Design and Hosting, the customer is ultimately responsible for remembering their renewal date and to make sure payment is made upon the renewal.

- **Renewals:**

Your account will be automatically renewed under the same time and fee structure unless you give written notice to Malama Web Design and Hosting thirty (30) days before the renewal date that you do not wish to renew or make changes to such account.

- **Cancellation & Refunds:**

Should you become dissatisfied with our services within the first 30 days of your account activation, Malama Web Design and Hosting will refund your hosting fee subject to the money back guarantee terms listed in this agreement. Refunds are not available for customers after the 30 days of account activation. You may however cancel your account at any time in order to make sure that your account is not renewed. You will need to contact customer service and verify information before cancellation takes place. You will be charged in full for the entire month in which you cancelled your account. Accounts which have negative balances will be sent to collections and all services will be terminated, including domain registrations. Refunds are never available for domain registrations. Domain Names transferred to our service incur an additional year of registration and therefore are considered a domain registration. Domain registration fees are \$24.95/yr. Domain names of customers which leave our hosting service will be refunded the package price total less the domain registration fee if the customer leaves Malama Web Design and Hosting hosting service within the 30 day money back guarantee.

### **99.9% Service Level Agreement " SLA"**

Malama Web Design and Hosting offers its clients a 99.9% network uptime guarantee for customer satisfaction purposes and also to ensure that your business is running problem free. Malama Web Design and Hosting will try to maintain maximum uptime. Malama Web Design and Hosting is not responsible for any downtime caused by the client.

### **30-Day Money Back Guarantee**

Malama Web Design and Hosting offers an unconditional 30-day money back guarantee that covers cancellations of a web hosting account made during the first 30 days of service, due to the inability to deliver satisfactory services. As a part of our strive to achieve industry leading customer satisfaction, the customer will be refunded all hosting charges made to their credit card minus any setup fees or domain name costs which



are non-refundable. The guarantee does not apply to accounts with non-use, misuse, and/or abuse of this agreement. Domain name registrations are also non-refundable. Domain Names transferred to our service incur an additional year of registration and therefore are considered a domain registration. Domain registration fees are \$24.95/yr. Domain names of customers which leave our hosting service will be refunded the package price total less the domain registration fee if the customer leaves Malama Web Design and Hosting hosting service within the 30 day money back guarantee. Any questions regarding the 30-day money back guarantee should be forwarded to [billing@malamaweb.com](mailto:billing@malamaweb.com).