



*Last Updated: 7/12/2005*

By submitting the online order form, or by using Big Host Africa service, Customer hereby agrees to Big Host Africa Terms of Service (TOS), Acceptable Use Policy (AUP), No Spam Policy (NSP), and Privacy Policy.

Unless otherwise specified, in this TOS, the AUP, the NSP, and the Privacy Policy, the usage of “us”, “we”, “our”, and “ours” shall refer to Big Host Africa, a Kenyan Company, and all its parents, subsidiaries, successors, and assigns. The usage of “you”, “your”, “they”, and “them” shall refer to the Customer of Big Host Africa.

Moreover, in this TOS, the AUP, the NSP, and the Privacy Policy, “Big Host Africa” shall refer to also Bighostweb.com, and all its parents, subsidiaries, successors, and assigns; unless otherwise specified, “Big Host Africa” and “bighostweb.com.” shall have the same meaning and shall be interchangeable.

Customer agrees that it shall comply with this TOS, Big Host Africa Acceptable Use Policy (AUP), and Big Host Africa’s No-Spam Policy (NSP). Customer further agrees that it has read Big Host Africa’s Privacy Policy and agrees to all the terms and conditions in the Privacy Policy. In this document, the word “Agreement,” with a capital “A,” refers to the TOS, the AUP, the NSP, and the Privacy Policy collectively.

1. General Terms. In consideration of hosting services to be delivered, Customer agrees to be bound by the following terms and conditions:

1.1. Customer agrees to pay, in advance of each monthly service term, for hosting services to be rendered.

1.2. Customer agrees to be bound by the service term selected on the online order form or via applicable promotional codes that may require Customer to order Big Host Africa’s service for a certain minimum period of time.

1.3. Customer agrees to a no-refund policy in advance. Setup fees and monthly web hosting service fees are non-refundable.

1.4. Non-Payment of services shall result in a 5-day notice of disconnection. All payment failures must be cured within 5 business days from invoice due date or account will be suspended. Account termination will result from invoices overdue for 30 days.

1.5. Big Host Africa is not and shall not responsible for data integrity for any accounts that are terminated, disconnected, or interrupted because of Customer’s failure to pay for Big Host Africa’s services.

1.6. Customers agree to pay all taxes applicable to your account.

2. Agreement for Services.

2.1. Big Host Africa will provide, and Customer will purchase and pay for, the Web hosting services (the “Services”), according to the service fees specified in the Order for the applicable Service Description. Customer acknowledges that the service, and service fees have been communicated to the Customer, and that Customer is aware of all applicable charges as per the Agreement. Customer also understands that no promotional offers will apply to their individual service unless said promotional offers are specified in this Agreement.

3. Payment.

3.1. Establishment and

provision of service is contingent upon receipt of payment from Customer to Big Host Africa.

3.1.1. Customer must pay in full for the Services before Big Host Africa begins to provide the Services to Customer. Invoices are generated 5 days before renewal and customer agree that if paying by credit card, recurring billing will be billed and charged automatically on the date the invoice is generated and that Big Host Africa may apply the amount due at any time to the credit card listed on file. 3.1.2. Setup fees will be charged and are due at the time of the Customer's initial request of the Services requiring setup. 3.2. Payment is due on the defined monthly recurring billing date of each month. All returned checks will be charged a \$20.00 service fee. Service will be interrupted on accounts that reach 5 days past due. Accounts that are not collectable by Big Host Africa will be turned over to an outside agency for collection. If your account is turned over for collection, you agree to pay to Big Host Africa a "Processing and Collection" Fee of not less than Fifty (\$50.00) Dollars nor more than One Hundred Fifty (\$150.00) Dollars. 4. Delinquent Accounts. Big Host Africa may temporarily deny service or terminate this Agreement upon failure of Customer to pay charges when due. Such termination or denial will not relieve Customer of responsibility for the payment of all accrued service fees, and any collection fees to which Big Host Africa may be entitled under this Agreement or under applicable law. 5. Account Cancellation. Customers may voluntarily cancel their account at any time, for any reason or for no reason, by filling out the "Cancellation Request Form" which is provided on the Big Host Africa Web site.

Once a Customer has cancelled their account before the renewal date, no more charges will be billed to the account. Cancellations on or after renewal will be charged renewal fees.

Paypal paying customers cancelling their paypal subscription payment does not warrant cancellation of service. All cancellations must go through the cancellation form.

Customer can terminate their account for any reason or for no reason. However, Customer understands and agrees that Big Host Africa does not provide pro-rated or any other kinds of refunds on cancellations. All fees Customer has paid shall be nonrefundable. 6. Refunds and Disputes. **IMPORTANT NOTICE: EXCEPT AS EXPLICITLY PROVIDED IN THIS SECTION 6, ALL PAYMENTS TO BIG HOST AFRICA ARE NONREFUNDABLE.**

All payments to Big Host Africa are nonrefundable. This includes any setup fees and monthly fees regardless of usage. All billing disputes must be reported within thirty (30) days of the time the dispute occurred. Disputed charges to your credit card issuer, also known as chargebacks, which, in Big Host Africa's sole discretion, are invalid under the terms and conditions of this Agreement, will result in service interruption, and reconnection fees to restore the desired service.

Without waiving any of its other rights under this Agreement, Big Host Africa offers to its Customers a 30-day money-back guarantee on **fees for hosting services only** (the "30-Day Guarantee"). If for any reason you cancel your account by filling in the account cancellation form and submitting it to Big Host Africa, within thirty (30) days of the beginning of your service, Big Host Africa will refund your money with no questions asked; provided, however,

that you have never previously obtained a refund under the 30-Day Guarantee. If you have ever previously obtained a refund under the 30-Day Guarantee, your account will be canceled, but no money will be refunded to you.

Please note that the amount refunded to you will be the amount you paid for hosting services only, and will not include any of the following fees:

- Setup fees,
- Fees for domain name registrations,
- Fees charged for exceeding your allotted disk storage space or bandwidth,
- SSL certificate fees,
- Web design fees,
- Web site marketing fees,
- Any add-on services, features, software, and
- Any other fees for services involving a third party.

The 30-Day Guarantee is subject to all of the following limitations:

- You are entitled to a maximum of one (1) 30-Day Guarantee.
- If you do not cancel your account within thirty (30) days of the beginning of your service, your right to the 30-Day Guarantee shall expire forever and may not be revived under any circumstances, without the prior express written approval of Big Host Africa.
- You may not transfer or assign the 30-Day Guarantee to any third party.
- You agree that you will not circumvent the restrictions on the 30-Day Guarantee described in this document, or attempt to circumvent those restrictions by any means, including, but not limited to, the following actions:
  - Creating multiple accounts, using the same customer name or different customer names;
  - Canceling your account for the sole purpose of obtaining a refund and then registering for a new account;
  - Organizing multiple business entities or using assumed business names for the purpose of circumventing these restrictions;
  - Knowingly providing false or misleading information when you register for your account; or
  - Requesting a refund under the 30-Day Guarantee at any time after you have already received a refund under that guarantee.

- If you violate any provision of any of the following policies of Big Host Africa, you will not be eligible for the 30-Day Guarantee:
  - Terms of Service (TOS);
  - Acceptable Use Policy (AUP); or
  - No-Spam Policy (NSP).

Changes to your service, including, but not limited to, adding new services, removing services, or changing the type of hosting plan you have do NOT make you eligible for an additional 30-Day Guarantee. The 30-Day Guarantee applies to your first order of Web hosting services from Big Host Africa and does not apply to any changes to your service at any time. 7. Customer agrees not to engage in any activity that violates any international, foreign, federal, state, or local laws applicable to the service terms described in this Agreement. 8. Big Host Africa reserves the right to discontinue service to any Customer it deems, in its sole discretion, violates any condition of service including, but not limited to, the following: 8.1. the [Acceptable Use Policy](#), or 8.2. the [No-Spam Policy](#). 9. Backups. 9.1. In order to allow us to provide the best service to you, Big Host Africa accounts are backed up daily. However, these backups are intended for Big Host Africa's administrative purposes only, to allow us to provide excellent service to our customers. As part of its commitment to first-rate customer service, Big Host Africa always seeks to create complete and accurate backups of customer accounts. 9.2. Even the best and most complete and redundant backup systems can and do fail for a variety of reasons, despite the best efforts of the Web hosting service. THEREFORE, BIG HOST AFRICA DOES NOT GUARANTEE THE AVAILABILITY, COMPLETENESS, CURRENCY, OR INTEGRITY OF THESE BACKUPS OR THE DATA THEY CONTAIN. Consequently, you must not rely upon the availability, completeness, currency, or integrity of these backups. 9.3. Customers are responsible for maintaining their own backups on their own personal computers or other computers. 9.4. Big Host Africa does not provide any sort of compensation for lost, inaccurate, incomplete, or outdated data in the event that Big Host Africa's backups do not function properly, regardless of the reason(s) for any such malfunction, even if the malfunction was due to the fault or negligence of Big Host Africa or any of its employees or agents, and regardless of whether Big Host Africa had been informed of the possibility of such malfunction, or any fault or negligence that might cause it. 9.5. In the event that you need to recover data from a backup, Big Host Africa will use reasonable efforts to restore data to your account from the appropriate backup. HOWEVER, PLEASE NOTE THAT THIS SERVICE IS INTENDED TO COMPLEMENT YOUR OWN BACKUPS TO YOUR OWN COMPUTER, AND IS NOT A SUBSTITUTE FOR THOSE BACKUPS. AGAIN, BIG HOST AFRICA DOES NOT GUARANTEE THE AVAILABILITY, COMPLETENESS, CURRENCY, OR INTEGRITY OF ITS BACKUPS. 9.6. You understand and agree that Big Host Africa's backup policy does not create any warranties for whose breach Big Host Africa can be held liable. 10. Customer agrees to defend, indemnify, and hold harmless Big Host Africa, and the parents, subsidiaries, successors, assigns, employees and agents of Big Host Africa against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments (collectively, "Losses") to which an indemnified party may become subject and which Losses arise out of, or relate to this Agreement or Customer's use of the Services, and to

reimburse an indemnified party for all legal and other expenses, including reasonable attorneys' fees incurred by such indemnified party in connection with investigating, defending, or settling any Loss whether or not in connection with pending or threatened litigation in which such indemnified party is a party. 11. BIG HOST AFRICA SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR 11.1. ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, OR LOSS OF DATA RESULTING FROM THE USE OF BIG HOST AFRICA'S SERVICES BY CUSTOMER OR ANY THIRD PARTIES, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, OR 11.2. ANY LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS. 12. BIG HOST AFRICA PROVIDES THE SERVICES AND PRODUCTS AS IS, WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED. BIG HOST AFRICA DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT OF ANY THIRD-PARTY RIGHTS, AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE, AND SUITABILITY OF THE SERVICES AND BIG HOST AFRICA SHALL HAVE NO LIABILITY THEREFOR. 13. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BIG HOST AFRICA DISCLAIMS, ALL WARRANTIES, REPRESENTATIONS OR OTHER ENDORSEMENTS, EXPRESS OR IMPLIED, WITH REGARD TO THE INFORMATION ACCESSED FROM, OR THROUGH, THIS SERVICE, THE SYSTEMS WHICH PROVIDE IT, AND THE INTERNET, INCLUDING ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY RIGHTS. 14. BIG HOST AFRICA DOES NOT ASSUME ANY LIABILITY FOR THE COMPLETENESS, ACCURACY, OR USEFULNESS OF ANY INFORMATION DISCLOSED OR MATERIALS ACCESSED THROUGH ITS SERVICES, ITS SYSTEMS, ITS NETWORKS, OR THE INTERNET. 15.No Waiver of Rights by Big Host Africa. Any failure by Big Host Africa to enforce this Agreement in every instance in which it might apply does not amount to a waiver of any of Big Host Africa's rights. 16. Arbitration. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS CONTACT OR ANY BREACH THEREOF IN EXCESS OF \$250.00 SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. 17. Notices. 17.1. From Big Host Africa to Customer. Big Host Africa will notify you by e-mail of any notices that Big Host Africa is required to provide to you under this Agreement, at the most current e-mail address you have provided to Big Host Africa.

By entering this Agreement, you consent to receive notices by e-mail. You are solely responsible for ensuring that Big Host Africa has your most current e-mail address, and Big Host Africa shall not be responsible for any lost, misdirected, bounced, forwarded, or undeliverable e-mail that Big Host Africa sends to the most current e-mail address you have provided to Big Host Africa. 17.2. From Customer to Big Host Africa. Unless otherwise specified in this Agreement, notices to Big Host Africa shall be sent to the following address:

Big Host Africa  
Attention: Legal Notices

P O Box 3620

Thika, Kenya. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Kenya, without regard to choice of law or conflicts of law provisions that would cause the application of the law of another jurisdiction. 19. Currency. All monetary amounts to which this Agreement refers shall be in United States dollars. 20. Entire Agreement. This Agreement, including all of its component parts, comprises the entire agreement between you (the Customer) and Big Host Africa, and supersedes any prior or previous agreements between you and Big Host Africa with respect to the subject matter of this Agreement; provided, however, that you agree that you shall be subject to any additional terms and conditions of which Big Host Africa notifies you from time to time, pursuant to this Agreement. 21. No Oral Modification of this Agreement. This Agreement may not be modified orally. 22. Assignment. 22.1 Customer shall not assign or attempt to assign its obligations under this Agreement without Big Host Africa's prior and express written consent to such assignment. 22.2. Big Host Africa may assign any or all of its rights and obligations under this Agreement at any time without prior notice to or consent of Customer. 23. Consent to Jurisdiction; Venue. Jurisdiction and venue for arbitration or litigation of any dispute, controversy, or claim arising out of, in connection with, or in relation to this Agreement, or the breach thereof shall be proper only in a venue determined Big Host Africa. 24. Choice of Law. For all purposes, this Agreement shall be deemed to have been made within the State of Texas, United States of America. This Agreement shall be governed by the laws of the United States of America and the laws of the State of Texas, without regard to Texas' choice of law and conflicts of law rules, and Big Host Africa and Customer each submit to the exclusive jurisdiction of the courts of Harris County, Texas, or to the United States District Court for the Southern District of Texas, should any claim or question arise under Federal law or federal jurisdiction based upon diversity of citizenship. 25. Force Majeure. Big Host Africa shall not be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, terrorism, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, magnetic interference, interruptions of electrical power or other utility service, unavailability of any telecommunications or wireless service or connection to any telecommunications or wireless service, or any cause beyond the reasonable control of Big Host Africa. 26. Severability of Terms of this Agreement. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties hereto, and the remainder of the provisions shall remain in full force and effect. 27. Limitation of Actions Arising Under this Agreement. Any cause of action you may have with respect to Big Host Africa's performance or alleged non-performance of this Agreement must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is forever barred. 28. Denial of Service Big Host Africa reserves the right to refuse or discontinue service to anyone at our sole discretion. 29. Abuse of Big Host Africa Staff or Support Personnel.

29.1. At Big Host Africa, we take pride in providing excellent service to all of our customers. It is our policy always to treat our customers with the highest level of respect and courtesy. In return, we expect the same respect and courtesy from you.

29.2. If our staff feels that you are consistently engaging in abusive content toward them, or addressing them in a demeaning or rude manner, your account(s) may be suspended and you may be asked to take your business elsewhere. In the event that we terminate service for abusive conduct, customers will be given five (5) days' notice. We will issue a refund only for the unused portion of pre-paid service.

29.3. Abusive conduct includes, but is not limited to, the following behaviors:

- Repeatedly addressing members of our staff in a demeaning or rude manner;
- Using profanity in any oral or written communications with our staff, by any medium of communication, including but not limited to e-mail, instant messages, chat, text messaging, fax, postal mail, telephone, voice over Internet Protocol (VoIP), or in-person communication;
- Yelling or shouting at our staff;
- Deliberately using all capital (uppercase) letters in any written communication to our staff;
- Insulting our staff because of their personal characteristics, or on the basis of their race, ethnicity, national origin, sex, sexual orientation, religion, or housing or economic status; or
- Deliberately providing false information to our staff for the purpose of harassing them or wasting their time.