

## DeadlyServers Terms of Service

(Last Modified June 2, 2010)

**Revised:** June 27th, 2011 6:00 PM CST.

DeadlyServers agrees to furnish services to the Client, subject to the following TOS (Terms of Service) agreement. This document may be changed from time to time at the discretion of DeadlyServers.

### **Disclosure to Law Enforcement:**

This document specifically prohibits the use of our services for illegal activities. Therefore, Clients agree that DeadlyServers may disclose any and all client information including assigned IP numbers, account history, account use, and any other account information to any law enforcement agency who makes a written request without further consent or notification to the Client. In addition DeadlyServers shall have the right to terminate all services set forth in this Agreement.

### **Payment and Fees:**

Clients acknowledge that the nature of the services furnished and the initial rates and charges have been communicated to Clients. Clients are aware that DeadlyServers may change the specified rates and charges from time to time, and will notify clients upon occurrence. The promotional offer is contingent upon DeadlyServers achieving and maintaining its cost of service goals including but not limited to rates charged to DeadlyServers by its suppliers. Establishment of this service is dependent upon receipt by DeadlyServers of payment of stated charges. Subsequent payments are due on the anniversary date of the month for that month's service. Services will be interrupted on accounts that reach 3 day past due. Service interrupted for non-payment may be subject to a \$10 re-instate charge. Accounts not paid by due date are subject to a \$5 late fee per every 30 days overdue. Accounts that are not collectible by DeadlyServers may be turned over to an outside collection agency for collection. If your account is turned over for collection, you agree to pay DeadlyServers a "Processing and Collection" Fee of not less than \$75. Client authorizes DeadlyServers to attempt to collect on invoices once they become past due. Client acknowledges that, in the event an invoice becomes past due, DeadlyServers may attempt to collect the funds by subsequent charges to the credit card used, or by subsequent PayPal Money Requests being sent to the client. Client authorizes DeadlyServers to attempt to re-process any transaction until funds are paid in full, or until the account is referred to an outside agency for further collection action, as per this section. If you desire to cancel your account, please follow the proper procedure to do this as outlined in this document. Client acknowledges that any development work (PHP, MYSQL, JAVA, and other languages) performed by our technicians for free may be charged at the rate of \$150 per hour if we are forced to pursue debt collection attempts. DeadlyServers reserves the right to charge a \$35 fee for any returned payment (NSF).

### **Re-Activation Fees**

Any account that is suspended for any reason is automatically subject to a one time re-activation fee of \$5 USD.

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### **PayPal Subscription Cancellations:**

Clients acknowledge that if they cancel their Pay Pal subscription without requesting a cancellation, DeadlyServers may require the client to re-establish a subscription in order to continue service. Note that cancellation of a PayPal subscription does not cancel your account with our company. Clients who wish to cancel their service must contact us in accordance with the Account Cancellation section of this agreement. If a client has requested a cancellation of service, it is their responsibility for them to terminate the subscription. No refund will be issued to clients who fail to cancel their subscription.

### **Threats and Demands**

Any threat or demand of legal action, PayPal dispute, or chargeback will immediately result in your account being canceled without refund.

### **Subscription Service:**

All services with DeadlyServers are subscription based services. This means the client is agreeing to a term to term subscription. A client who chooses to pay month to month, quarter to quarter, semi-annual to semi-annual and annual to annual agrees to be held liable for any and all charges until which time the client wishes to terminate service and must provide enough time per the Account Cancellation agreement which is 1 days prior to next billing cycle. Client understands that accepting this Terms of Service the client is agreeing to a Subscription based service and not a one time fee to clients card or paypal account. Client may terminate this subscription at any time and may be entitled to a refund if client cancels service 1 days prior to next billing date and still gets billed after the billing date due to the negligence of DeadlyServers.

### **Billing Errors Notice**

Any billing errors made on DeadlyServers end must be reported within 60 days of the invoice in question. Any billing errors reported 60 days or more after the invoice in question's due date are non-reversible.

### **Refunds and Disputes:**

Refunds are only issued if there is a documentable problem that you worked with us to resolve and were unable to do so. All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred. If you dispute a charge to your credit card issuer that, in DeadlyServers sole discretion is a valid charge under the provisions of this document, you agree to pay DeadlyServers an "Administrative Fee" of \$175.

### **14 Day Money Back Guarantee:**

DeadlyServers offers a 14 day money back guarantee, if at anytime you are having issues with your service within 14 days and our staff members are unable to resolve the issues with your service we will gladly refund your sign up amount. Clients understand that they must work with our company to attempt to resolve any issues which they are having. Clients who state they are not having issues and simply would like a refund will be refused. This protects us from clients attempting to fraudulently use our service and gaining a refund without a reason that is valid in

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the eyes of DeadlyServers. Please note that our guarantee does not apply to foreign locations where we cannot control the quality of the network.

### **Account Cancellation:**

All requests for cancellation must be made in writing with at least 1 days' notice of your current due date. Requests to cancel service with DeadlyServers must be submitted in the form of a ticket by visiting <https://billing.deadlyservers.com> and submitting a ticket to the Cancellations department from the support account associated with the account which is being canceled. Service will be interrupted five days prior to the next billing cycle. The ticket system will assign out a ticket id for your reference immediately after you have submitted your ticket. This ticket id is sufficient evidence that you did indeed request to cancel service, client agrees to keep this ticket id handy in the even the client wishes to dispute a charge. Client agrees that DeadlyServers will NOT take phone cancellations and all cancellations must be done via the ticket system provided above, clients who state they canceled via phone or email will not be entitled to any reimbursement and will be held liable for services rendered.

### **Client Acknowledgment:**

The Client acknowledges that the service provided is of such a nature that service can be interrupted for many reasons. Therefore, the Client agrees that DeadlyServers shall not be liable for any damages arising from any reason. Furthermore, DeadlyServers may terminate your account at any time, without notice as it sees fit.

### **New Order Processing:**

The client acknowledges that DeadlyServers processes packages instantly and automatically. Client agrees that in the event the client does not receive a copy of his/her welcome e-mail that the client will contact DeadlyServers immediately to obtain a new copy of his/her welcome e-mail. Clients who do not contact DeadlyServers immediately will be held liable for all services being rendered until which time the client requests to cancel those services with DeadlyServers. The Client also may obtain a new copy of his/her welcome email by logging into the Billing Center and visiting the link "My Emails".

### **Support Boundaries:**

DeadlyServers makes a guarantee that voice-related support requests will be answered within 8 hours. We limit our technical support to our area of expertise. The following is our guidelines when providing support: DeadlyServers provides support related to your server or virtual site's physical functioning. DeadlyServers does provide tech support for application specific issues. DeadlyServers does not provide technical support for Client's customers. Lastly the Help files in the program you are using may have the answer to your question so please do investigate these resources before you contact technical support. DeadlyServers provides support through our support ticket system located [here](#).

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### **Backups:**

DeadlyServers makes weekly backups of client data. However, the client agrees to keep backups of the clients own website, mail, and mysql files. The client agrees to not hold DeadlyServers accountable for any data loss due to but not limited to: a hard drive failure, data corruption, system failures, system upgrades, or system additions. DeadlyServers does not and will not keep backups of client personal files or folders. In the event of a system failure DeadlyServers will attempt to recover client files but may not always succeed.

### **System and Network Security:**

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

#### **A**

Accessing data not intended for such User or logging into a server or account, which such User is not authorized to access.

#### **B**

Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.

#### **C**

Attempting to interfere with services to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".

#### **D**

Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.

#### **E**

Taking any action in order to obtain services which such User is not entitled.

### **Notification of Violation:**

DeadlyServers is under no duty to look at each client's or user's activities to determine if a violation of this document has occurred, nor do we assume any responsibility through our TOS to monitor or police Internet-related activities.

### **First Violation:**

Any user, which DeadlyServers determines to have violated any element of this document, shall receive an email, warning them of the violation. The service may be subject at DeadlyServers discretion to a temporary suspension pending a User's agreement in writing, to refrain from any further violations.

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### **Second Violation:**

Users that DeadlyServers determines to have committed a second violation of any element of this document shall be subject to immediate suspension or termination of service without further notice.

We reserve the right, to drop the section of IP space involved in Spam or Denial-of-Service complains if it is clear that the offending activity is causing great harm to parties on the Internet. In particular, if open relays are on your network or a client's network, or if denial of service attacks are originating from your network. In certain rare cases, we may have to do this before attempting to contact you. If we do this, we will contact you as soon as we can.

### **Right to Refuse Service:**

DeadlyServers reserves the right to refuse service to anyone, or to cancel any account, for any reason or for no reason at all. In instances where the service of an existing client is canceled, DeadlyServers may issue a refund for funds already paid.

### **Authorization to Use Services**

The client is granted the right to use the services provided by DeadlyServers in the manner it is intended. Any unauthorized use of the services may result in account suspension, account termination, and administrative fees. Unauthorized use includes, but is not limited to, (a) making unauthorized modifications to the slot count / maximum number of users for any service, (b) using the service in such a way that it causes the disruption of other users, and (c) using the service in such a way that the service facilitates the unauthorized or unintended use of the service by the account holder or any other user of the service. DeadlyServers reserves the right to, at its sole discretion, terminate without refund any account it feels is in violation of this clause.

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### Rule of Law and Arbitration

Read this section carefully, as it limits your legal rights. This agreement is entered in to, and shall be subject to all applicable laws of, the State of Wisconsin, United State of America. Should a conflict arise out of this agreement which would cause any parties rights to be limited by the laws of any other jurisdiction, the laws applicable to the State of Wisconsin, and any relevant Federal laws of the United States of America, shall apply. You agree to waive any rights that are in conflict with the prevailing laws of the aforementioned jurisdictions. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled solely and exclusively by binding arbitration in Kenosha, Wisconsin. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of our company, with the following exceptions if in conflict: (a) one arbitrator shall be chosen by DeadlyServers; (b) client party to the arbitration will pay full expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the our rules and regulations) of the proceedings has been given to such party. Client party shall bear both our company and its own attorneys fees and expenses. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity; provided however, that nothing in this subsection shall be construed as precluding the bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. The arbitrator shall be required to follow applicable law. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.

### Miscellaneous Provisions:

You must provide us with, and keep current, good contact information for you. E-Mail, Fax, telephone contacts are used, in that order of preference.

#### A

A waiver by DeadlyServers of any breach of any provision of this Agreement by the Client shall not operate as or be constructed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof.

#### B

The Client shall not transfer or assign this Agreement without the prior written consent of DeadlyServers. DeadlyServers may assign Agreement at anytime without the consent from or notice to the Client. DeadlyServers reserves the right to cancel client's rights under this contract at anytime without further obligation.

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### C

DeadlyServers takes no responsibility for any material input by others and not posted to the DeadlyServers Network by DeadlyServers. DeadlyServers is not responsible for the content of any other websites linked to the DeadlyServers network; links are provided as Internet navigation tools only. DeadlyServers 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.

### D

DeadlyServers is not responsible for any damages your business may suffer. DeadlyServers does not make implied or written warranties for any of our services. DeadlyServers denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by DeadlyServers.

### **Responsibility for Content:**

You, as DeadlyServers client, are solely responsible for the content stored on and served by your DeadlyServers server.