

AIT Online Agreement

THIS AGREEMENT is made and entered into between Advanced Internet Technologies, Inc., and/or its subsidiaries located at 421 Maiden Lane, Fayetteville, North Carolina 28301, hereinafter referred to as ("AIT") and you, the Customer ("Customer" or "You"), who wish to use the below-described Service(s) of AIT in accordance with this Agreement, to include AIT's application/order form, and its various policies, which are located on the World Wide Web at <http://www.aitcom.net> and its various subdirectories. You and AIT are collectively referred to in this Agreement as the "parties."

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. DEFINITIONS:

a. "Agreement" shall refer to the complete and entire understanding between the parties, exclusively represented by the totality of the following documents: this instrument, which you are now reading; the AIT application/order form for Web space and Services; AIT's Acceptable Use Policy (AUP); and AIT's Billing and Procedures Policy (BP). The term "Agreement" shall not refer to any statement, supposition, or understanding not recorded in writing in the above-listed documents. The AIT AUP may be found at URL: <http://aitcom.net/legal/aup/>. The AIT BP may be found on-line at URL: <http://aitcom.net/legal/billing/>.

b. "Registered Name" shall refer to a domain name, whether consisting of two or more levels, about which the Registry Operator of a Top Level Domain (TLD), or an affiliate engaged in providing Registry Services, maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. In essence, a Registered Name is a domain name that is registered with a Registry Operator, through an ICANN-accredited Domain Name Registrar.

2. SERVICE DESCRIPTION: As a World Wide Web, Information Technology, and Internet Service Provider, AIT provides Internet Web hosting, ecommerce, domain registration, and associated services, hereafter referred to as the "Service" or "Services." For this purpose, AIT maintains a network of dedicated server computers, routers, hubs, switches, and other equipment (collectively, the "Network") located in North Carolina, USA, and integrated with the Internet. This Network sends and receives data and information via the World Wide Web. Customer wishes to connect to the Web and establish an Internet Web presence by utilizing the various resources of AIT's Network and AIT's Services. The quantity, type, and duration of Services provided to Customer shall be as Customer has already affirmatively selected in the AIT application/order form. (See summary of options in paragraph 18, below.)

3. CONDITIONS:

- a. The AIT application/order form for Web space and Services; AIT's AUP; and AIT's BP are incorporated herein by reference, as if fully set out. The foregoing constitutes a legal and binding contract between AIT and Customer, which does not extend to any other person or entity.
- b. Customer may resell to third parties, but is responsible for third party activities and content, and is bound by the terms of this Agreement.
- c. The duration of this Agreement, as to its Initial Term and any renewal thereof, shall be as Customer has already affirmatively selected on the AIT application/order form. (See summary of options in paragraph 18, below.)
- d. In accordance with (IAW) the BP, AIT will bill Customer, and Customer shall pay, for excess resources used by Customer, such as data transfer, disk space usage, and virtual host limits. If Customer exceeds the virtual host limit for a particular AIT service plan, however, AIT will automatically upgrade Customer's account to the next-higher service plan, and bill Customer according to the upgraded plan, and Customer will pay according to the upgraded plan.
- e. Also IAW the BP, cancellations made after an application has been received by AIT, and after Web space has been set up by AIT, do not nullify Customer responsibility to pay costs incurred by AIT in setting up said Web space. To protect Customer's data from malicious deletion or other tampering, and to protect AIT from liability therefore, all cancellations by Customer must be accomplished exactly IAW the AIT BP.

4. **WARRANTIES and LIMITATION OF LIABILITY:** With respect to the Services to be provided hereunder, Customer understands and acknowledges that AIT MAKES ABSOLUTELY NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. Customer further agrees that AIT shall not be liable to Customer for any claims, damages, or loss of profit which may be suffered by Customer or any other entity in any respect for direct, indirect, consequential, actual, or punitive damages arising out of or in relation to the Services provided hereunder, including, but not limited to, losses or damages resulting from loss of data due to delays, non-deliveries, or Service interruptions. The utilization of any data or information received by Customer from use of the Services to be provided by AIT is at Customer's sole and absolute risk. AIT specifically disclaims and denies any responsibility for the completeness, accuracy, or quality of such data or information.

5. TRADEMARKS

- a. Customer shall not use the AIT name, trademarks, trade names, or logos in connection with the operation of Customer's business, except as may be provided for in this Agreement. Neither party shall use the other party's name, trademarks, or logos in either its own corporate name or in any fictitious name. Neither party nor its employees or agents shall knowingly remove or alter any trademark, trade name, copyright, or other

proprietary notices, legends, or symbols from any of the other party's products or documentation or intellectual property.

b. Neither party shall take any action, or intentionally omit to take any action, that would jeopardize, limit, or interfere in any manner with the ownership of the other party in the other party's products, services, documentation, or intellectual property. Title to and ownership of all copies of any products, services, software, documentation, or Internet services developed by or for AIT or owned by AIT through the term of this Agreement, whether in machine-readable or printed form, and including, without limitation, any derivative works, compilations, or collective works thereof, and all related technical know-how, and all rights therein (including without limitation rights in patents, copyrights, and trade secrets applicable thereto), are and shall remain the exclusive property of AIT and its suppliers. Customer shall not take any action to jeopardize, limit, or interfere in any manner with AIT's ownership and rights therein.

c. Customer agrees not to disassemble, de-compile, or reverse-engineer any of AIT's Internet software or any of AIT's source code, without limitation.

6. CONFIDENTIALITY & NON-COMPETITION

a. Customer and AIT hereby agree not to disclose or use, and to assure that their employees and agents do not disclose or use, any confidential information belonging exclusively to one another ("one another's Confidential Information"). Customer and AIT acknowledge that the following materials and information, and all copies thereof, constitute one another's Confidential Information:

b. Lists of subscribers, customers, or clients, including without limitation information about their occupation, credit card numbers, information, and preferences; and the results of market research performed or obtained by one another concerning any such subscribers, customers, or clients;

c. Information belonging to and/or concerning one another which is not generally known by or disclosed to the public, including without limitation information regarding one another's hardware, software, personnel, finances, business plans, computer programs, code, algorithms, expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics, and other technical, business, financial and product development plans, forecasts, strategies, and any other information marked "Confidential"; and

d. Both parties acknowledge that the other party's above-listed Confidential Information is valuable, special, and unique; that its unauthorized disclosure or use will cause irreparable injury to the other party; that immediate injunctive and/or other equitable relief will be necessary and appropriate to remedy an unauthorized disclosure or use of such information; and that such relief may include without limitation a Temporary Restraining Order (obtained ex parte) as well as permanent injunctive or other relief.

e. Customer shall not cause or attempt to cause any Employee or Agent of AIT, of AIT's subsidiaries, or of its parent company, to terminate his/her employment or agency during the term of this Agreement. Customer further agrees not to cause or attempt to cause any of AIT's customers, their agents, or their employees to terminate their respective relationships with AIT, or with any of AIT's subsidiaries, or with its parent company.

f. Upon termination of this Agreement, each party agrees to return to the other party, within a reasonable time period, any and all Confidential Information and other materials belonging to the other party.

g. This Paragraph will survive the termination of this Agreement for a period of two (2) years.

7. PAYMENT POLICIES:

a. The following is intended to supplement the AIT BP by providing a context for it, without conflicting therewith.

b. As consideration for AIT's promise to provide to Customer the Services described hereunder, Customer agrees to pay AIT, at the time of submitting the application and order, all the AIT fees for the Services which Customer has ordered, regardless of the service plan/payment selections Customer has already affirmatively made on the AIT application/order form. (See summary in paragraph 18, below.)

c. All set-up and Initial Term fees are non-refundable, in whole or in part, even if Customer's Web hosting or other Service account shall be suspended, cancelled, or transferred prior to the end of Customer's then-current term. Any termination or cancellation by AIT or Customer shall not relieve Customer of the obligation to pay all fees accrued prior to such termination or cancellation.

d. Customer's set-up fee and first payment are due at the time the on-line application and Agreement are filled out and submitted to AIT. Customer will thereafter be billed according to the AIT BP, located on-line at <http://aitcom.net/legal/billing/>.

e. If Customer pays by check, restrictive endorsements or other statements on checks accepted by AIT shall have no effect. Customer shall reimburse AIT for all administrative costs (including reasonable attorney fees) associated with collecting delinquent or dishonored payments, to include chargebacks. At AIT's sole option, interest charges may be added to any past due amounts at the lower of 1.5% per month or the maximum rate allowed by law.

f. In the event that Customer fails to pay for Services IAW the AIT BP, AIT shall be entitled to unilaterally suspend its obligation to perform under this Agreement, in whole or in part, and to discontinue all or some Services, at its option, until payment is made IAW the BP. Moreover, in the event of failure to pay by Customer and/or a chargeback by a credit card company (or similar action by another payment provider allowed by AIT)

in connection with payments for the Services, Customer agrees and acknowledges that, in AIT's sole discretion, Customer's Registered Name (domain name) registration shall be transferred to AIT, and that AIT shall thereupon possess all rights regarding such Registered Name registration including, without limitation, the right to make said Registered Name available to other parties for purchase, for the purpose of recovering the sum that Customer has failed to pay. AIT may reinstate Customer's Registered Name registration at AIT's sole discretion, and will reinstate such following AIT's receipt of payment in full from Customer (unless AIT has already sold the Registered Name registration to a third party, under the above provisions of this Agreement).

g. As to guarantees or any promotional offers that may be in effect at the time you, the Customer, execute this Agreement, those promotional offers or guarantees are expressly subject to the following restrictions: All such promotional offers of products or services, such as free or reduced-rate domain name registration, free or reduced-rate set-up, or similar offers, may be invalidated by AIT in its sole discretion the first time you make a late payment to AIT, or in the event that you cancel your hosting plan within 30 calendar days after executing this Agreement; and in such circumstances, before a refund of any type is made to you, you will be charged the full price for such domain name registration, set-up, or similar product or service covered in a promotional offer. No 30-day "money-back" guarantee shall apply to a collocation hosting plan or a self-managed dedicated server-hosting plan. No 30-day "money-back" guarantee shall apply to your upgrade from one hosting plan to another hosting plan.

8. BREACH AND REVOCATION: In the event that AIT may at any time believe that the Service is being utilized for unlawful purposes by Customer, or in contravention of the terms and provisions of this Agreement, AIT may unilaterally and immediately discontinue such Service to Customer without liability. Without limitation, this provision will include adult-content matters, unsolicited bulk emailing, and failure to pay in accordance with the AIT BP.

9. SECURITY INTEREST IN CUSTOMER'S DATA AND REGISTERED NAME (DOMAIN NAME) REGISTRATION RIGHTS: Customer agrees that AIT and/or its subsidiaries shall have a security interest in Customer's data and in Customer's Registered Name registration, and shall have the right in AIT's sole discretion to suspend, cancel, transfer, or modify Customer's Web hosting account and Registered Name registration in the event that Customer fails to pay or otherwise breaches this Agreement. Customer understands and acknowledges that by placing Customer's Registered Name and Customer's information on AIT's servers, Customer has granted AIT and its subsidiaries a security interest in Customer's Registered Name registration and customer's data. Customer acknowledges and agrees that Customer's Registered Name is subject to suspension, cancellation, or transfer by any ICANN procedure, by any Registrar or Registry Operator procedures approved under an ICANN-adopted policy, or by any other TLD Registry Operator procedures as the case may be, for the resolution of disputes concerning the Registered Name. Customer further agrees and acknowledge that AIT owns all databases; compilations; collections; and similar rights, titles, and/or interests worldwide in the Web hosting and Registered Name databases generated by information

relating to AIT and AIT subsidiary customers, and all information and derivative works generated from the Web hosting and Registered Name databases to include but not limited to:

- a. the original creation date of the Registered Name registration;
- b. the expiration date of the Registered Name registration;
- c. the name, postal address, e-mail address (which AIT may alias for purposes of transfers), voice telephone number, and where available, fax number(s) of the technical contact, administrative contact, zone contact, and billing contact for the Registered Name registration;
- d. any remarks concerning the Registered Name that appear or should appear in the WHOIS or similar database;
- e. any other information AIT generates or obtains in connection with the provision of Registered Name registration and/or Web hosting services.

10. **DEFAULT; ACCELERATION; AND WAIVER OF NOTICE:** Should Customer fail to pay Customer's bill as required by this Agreement, or should Customer otherwise breach this Agreement, AIT may declare Customer in default and require Customer to pay the entire debt immediately and without prior notice. Further, in the event of default, AIT may act, in its sole discretion, as Customer's Attorney-in-Fact to execute actions or proceedings in connection with this Agreement, including, but not limited to, selling or otherwise disclosing Customer data and/or the Registered Name registration.

11. **INDEMNIFICATION:** Customer shall indemnify and hold harmless AIT from any and all loss, cost, expense, and damage on account of any and all manner of claims, demands, actions, suits, proceedings, judgments, costs, and expenses that may be initiated against AIT and AIT's officers, directors, and employees for any Service provided to Customer by AIT, to include Web space content that violates any copyright, trademark, or service mark; any proprietary right of any person or entity; any state and/or federal laws or regulations; or contains any defamatory matter.

12. **CHANGES IN TERMS OF AGREEMENT:** AIT reserves the right to make changes to the terms and conditions of this Agreement at any time, and to the on-line application/order form, to include pricing of the Services, advising of the change and the effective date thereof by publishing it to the appropriate AIT Web site, but with changes in fees being effective only at the end of any period for which Customer has prepaid. Utilization of the Service(s) by Customer following the effective date of such change(s) shall constitute acceptance by Customer of such change(s). Customer is solely responsible for staying informed with respect to changes in this Agreement, to include the application/order form, the AUP, and the BP, all of which are published on-line, as indicated above, and are readily available for public viewing.

13. **ENTIRE AGREEMENT AND UNDERSTANDING:** This instrument --- together with the application/order form for Web space and Services, AIT's AUP, and AIT's BP, all of which are published on AIT's Web site and are incorporated herein by reference ---

constitutes the entire Agreement between the parties, and represents the complete and entire understanding of the parties with respect to the subject matter of this Agreement.

14. RELATIONSHIP: The parties hereto are independent entities. Nothing in this Agreement shall be construed to constitute Customer an agent, employee, partner, independent contractor, joint venturer, or any other similar entity.

15. GOVERNING LAW: This Agreement shall be governed by the laws of the State of North Carolina in the USA without regard to such State's laws and rules concerning conflicts of laws. Each party agrees that jurisdiction and venue for any and all claims, disputes, or other matters arising out of the Services provided herein and under this Agreement will only lie in Cumberland County, North Carolina. If any action at law or in equity is brought in Cumberland County, North Carolina, to enforce or interpret the provisions of this Agreement and Services provided herein, the prevailing party in such action shall be entitled to all reasonable costs to include attorney fees. The parties agree that this Paragraph 15 is a material inducement to each of them to enter into this agreement, and further agree that, if either party violates this agreement by filing or bringing, outside Cumberland County, North Carolina, any action at law or in equity to enforce or interpret the provisions of this Agreement and the Services provided herein, the party filing or bringing such action shall fully reimburse the defendant party for its reasonable costs to include attorney fees, and shall make such reimbursement in full within ten (10) calendar days after receipt of a formal demand therefor, which demand shall include a list of all costs and expenses demanded.

16. SEVERABILITY: In the event that any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid in whole or in part for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

17. INTERPRETATION: The format, words, and phrases used herein shall have the meanings generally understood thereby in the Computer/Software/Internet Industries. This Agreement shall be construed according to its plain meaning. In the event any ambiguity shall be found herein, interpretation shall be based on the intent of the parties, rather than a construction automatically against the interests of the drafting party.

18. Customer understands that Customer has already affirmatively selected one of the following service plan/payment options on the AIT application/order form, which is incorporated herein by reference. The four options are summarized immediately below:

a. Option 1. Term of six (6) months shall begin on the date of application. Customer pays for the six months of Services in six monthly installments, each individual installment being nonrefundable, at Company's sole discretion. Thereafter, renewal terms SIX MONTHS IN DURATION shall be automatic unless one of the parties cancels IAW the BP within 30 calendar days of the end of the then-current term.

b. Option 2. Term of six (6) months shall begin on the date of application. Customer pays for the six months of Services in one initial prepay installment, such payment being nonrefundable, at Company's sole discretion. Thereafter, renewal terms SIX MONTHS IN DURATION shall be automatic unless one of the parties cancels IAW the BP within 30 calendar days of the end of the then-current term.

c. Option 3. Term of twelve (12) months shall begin on the date of application. Customer must pay for the twelve months of Services in one initial installment, such payment being nonrefundable, at Company's sole discretion. Thereafter, renewal terms TWELVE MONTHS in DURATION shall be automatic unless one of the parties cancels IAW the BP within 30 calendar days of the end of the then-current term.

d. Option 4. Term of twenty-four (24) months shall begin on the date of application. Customer must pay for the twenty-four months of Services in one initial installment, such payment being nonrefundable, at Company's sole discretion. Thereafter, renewal terms TWENTY-FOUR MONTHS in DURATION shall be automatic unless one of the parties cancels IAW the BP within 30 calendar days of the end of the term.

e. Option 5. Term of twelve (12) months shall begin on the date of application for Dedicate 3 plans. Customer pays for the twelve months of Services in twelve monthly installments, each individual installment being nonrefundable, at Company's sole discretion. Thereafter, renewal terms TWELVE MONTHS IN DURATION shall be automatic unless one of the parties cancels IAW the BP within 30 calendar days of the end of the then-current term.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, and in consideration of the covenants and agreements contained herein, do hereby execute this instrument, with each party warranting its ability to enter into this Agreement for the person or entity herein named as a party hereto. By filling out the online application/order form directly, using a dial-up IP address captured and logged by AIT (or by placing a recorded telephonic order with an AIT representative from a valid telephone number which is logged by a PBX system), and/or by clicking on "Accept" below, Customer agrees to all the terms and conditions of this Agreement.

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