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Terms + Conditions: Hosting Services Agreement

This Agreement is made effective between **ITX Corp.**, a corporation duly organized and existing under the laws of the State of New York having its principal office and place of business at 1169 Pittsford-Victor Road, Suite 100, Pittsford, New York 14534 (hereinafter referred to as "ITX"), and CLIENT as noted in the associated proposal, work authorization or other agreement (the "Client").

WHEREAS, **ITX®** has made available certain web hosting services and related services, including options or additional services ordered by **Client**, (hereinafter collectively called "SERVICES"); and

WHEREAS, **Client** desires to use the SERVICES to store its data on a server owned and maintained by **ITX**,

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

1. Hosting Services

1.1 General - Client has ordered, and **ITX** agrees to provide (upon acceptance of **Client's** request), the SERVICES including the SERVICES selected by **Client**. As part of the SERVICES, **ITX** will (a) configure, install, house, maintain, upgrade, monitor, modify and operate the computer equipment, server(s), operating software, network equipment and components (collectively, "**ITX Systems**") and (b) secure and maintain connectivity with third-party telecommunication providers, all as necessary to host and serve the CONTENT (as defined below) via the Internet. **Client** acknowledges that, as a part of **ITX SYSTEMS**, **ITX** may retain one or more third-party service providers to supply the necessary facilities, equipment, and connectivity to provide the SERVICES hereunder. Subject to the specific terms of this Agreement, **ITX** retains sole right and control over the programming, content and conduct on **ITX Systems**. **Client** is responsible for securing and maintaining its own Internet connectivity to access **ITX Systems**.

1.2 Domain Name Services

1.2.1 General - At the election of **Client** and in accordance with the SERVICES selected by **Client**, **ITX** may provide Domain Name **Services**, including the hosting of one or more domain names held by **Client** ("**DNS Services**") as part of the **Services**. If **Client** purchases **DNS Services** under its **Services**, **Client** shall provide **ITX** with one or more registered domain names (each a "**Client Domain**"). **ITX** shall host the **Client Domain(s)** during the effective term of this Agreement; provided that, such domain does not violate any registrar's policies, or any laws or regulations. **ITX** agrees to transfer the Client Domain at the direction of **Client** or upon termination of this Agreement. **Client** shall retain all right, title, and interest in the **Client Domain**, and, in no event, shall **ITX** acquire any ownership, title, interests or rights in the **Client Domain**.

1.2.2 ICANN - Any **Client** Domain shall be hosted and administered in accordance with terms of ICANN's then current domain name dispute resolution policy and/or the policies of the registrar of the **Client Domain**. The inability to use a domain name shall not entitle **Client** to a refund by **ITX** of any fees paid with respect to the registration of such unusable domain name.

1.2.3 IP Addresses - **ITX** may assign IP addresses to **Client** as part of the SERVICES. Any IP addresses or other network numbers assigned to **Client** by **ITX** are and shall remain the property of **ITX**. If **Client** terminates this Agreement and/or **ITX** ceases to provide domain name services, **ITX** may, in its sole discretion, reassign or reuse the IP addresses. **ITX** has sole discretion as to the Internet routing of any **ITX** network numbers. Upon termination, **ITX** will not have, and **Client** hereby releases **ITX** from, any responsibility or liability for any actions or costs related to the reassignment or reconfiguration of **Client's** system for any new IP addresses.

1.3 Uptime Goal - **ITX** shall use commercially reasonable efforts to make **ITX Systems** and the Service available 99.5% of the time (the "**Uptime Goal**"). The Uptime Goal shall be measured within **ITX Systems** on a monthly basis calculated to include twenty-four (24) hours per day over each month, but excluding from the numerator and denominator in the calculation the duration in time of any temporary shutdowns due to scheduled maintenance (which will not exceed in the aggregate ten (10) hours per month), telecommunications or power disruptions caused by third parties, and any other causes beyond the reasonable control of **ITX**. Any failure of **ITX** to satisfy the Uptime Goal shall not constitute a breach of this Agreement. **Client** FURTHER ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF **ITX** TO PROVIDE THE SERVICES IN ACCORDANCE WITH THE UPTIME GOAL IS TO TERMINATE THIS AGREEMENT PURSUANT TO SECTION 4.1.

1.4 Bandwidth and Storage Allowances - If **Client** uses any bandwidth or storage space in excess of the **Services** ordered by **Client**, **ITX** may, in its sole discretion, assess **Client** with additional charges, suspend the performance of the **Services**, or terminate this Agreement. In the event that **ITX** elects to take any corrective action, **Client** shall not be entitled to a refund of any unused pre-paid fees. **Client's** use of the **Services** and access to it is **Client's** responsibility. **Client** is responsible for any unauthorized access to the **Services** resulting in bandwidth and/or storage usage exceeding the limits in the **Services** selected by **Client** and resultant charges.

1.5 Modifications to Services - **ITX** reserves the right to change or modify the **Services**, any Service Options, the terms and conditions of this Agreement, or any policy or guideline applicable to the **Services**, at any time in its sole discretion. **ITX** will send a notice to **Client** of any such changes and will post a notice of such changes on **ITX's** web site at <http://www.itx.net>. Changes to this Agreement or Service Options will be effective the later of fifteen (15) days or **Client's** next monthly billing cycle. Changes to any policy or guidelines governing the **Services**, including the Acceptable Use Policy, shall be effective upon posting to the **ITX** site. If **Client** does not agree to any change to this Agreement, the Service Options, or any governing policy or guideline, **Client's** sole remedy is to immediately terminate this Agreement pursuant to Section 4.1 (notwithstanding any notice period). **Client's** continued use of the **Services** following **ITX's** posting of any changes to this Agreement, the Service Options, or any policy or guideline will constitute **Client's** acceptance of such changes or modifications.

1.6 Service Option Changes - Client may change Service Options under the Agreement with appropriate prior notice but will be subject to a change fee for such.

2. Client Content; Acceptable Use

2.1 Client Content - Client hereby grants **ITX** a limited, non-exclusive, royalty-free, non-sublicensable license to host, reproduce, transmit, cache, store, exhibit, publish, display, distribute, perform, edit, adapt, modify, create derivative works from, and otherwise use the **Client Content** solely as necessary to provide the **Services** for **Client**. "**Client Content**" means all materials, code, data, text (whether or not perceptible by users), multimedia information (including, but not limited to sound, data, audio, video, graphics, photographs, or artwork), **Client** Domain(s), e-mail, chat room content, bulletin board postings, or any other items or materials of **Client** or any third party that are provided or permitted by **Client** to reside on **ITX Systems**.

2.2 Client's Sole Responsibility - Client shall be solely responsible for all **Client Content**, including, without limitation, any content or materials of a third party that **Client** permits or enables to be posted onto or through **ITX Systems**. Subject to the terms of this Agreement, **Client** shall (a) be solely responsible for the creation, posting, updating and maintenance of the **Client Content**; and (b) manage, renew, create, delete, edit and otherwise control the editorial content of the **Client Content**. **ITX** will not be responsible for reviewing the **Client Content** prior to its posting by **Client**.

2.3 Compatibility - Client is responsible for ensuring that the **Client Content** will be "server ready" and otherwise remain fully compatible with **ITX Systems** (including all software and operating systems). **Client** acknowledges that it is responsible for having the necessary knowledge and expertise to maintain the **Client Content** on **ITX Systems**. **ITX** reserves the right to remove any **Client Content** that is not compatible with **ITX Systems**. Upon request from **Client**, and at **Client's** sole expense, **ITX** may assist **Client** in resolving any compatibility problems on a time and materials basis.

2.4 Acceptable Use

2.4.1 Client Obligations - Client shall at all times adhere to all applicable laws, rules, and regulations and to **ITX's** then current Acceptable Use Policy and Copyright Infringement Policy. A current version of these policies can be found on the **ITX** web site at <http://www.itx.net>. **Client** agrees not to interfere with or disrupt other network users network services or network equipment intentionally or not. Disruptions include, but are not limited to, distribution of unsolicited advertising or chain letters, violations of USENET news etiquette, propagation of computer worms or viruses, and using the network to make unauthorized entry into any other machine accessible via the network.

2.4.2 Excluded Services - ITX will not provide services and will terminate existing services immediately without compensation if the **Client's** web site is involved in any of the following: adult sites, copyrights violation, pirated software (also known as "warez"), pirated music and web sites whose primary business is web advertisement.

2.4.3 Rights of ITX -ITX may inspect the **Client Content** or investigate any alleged violation of this Agreement, any **ITX** policy or any third-party complaints. **ITX** will not access or review the contents of any e-mail or other stored electronic communications except as required or permitted by applicable law or legal process. In the event that **ITX** determines in its sole and reasonable

discretion that any **Client Content** or conduct or actions of **Client** (including its employees and users) are objectionable, unlawful, potentially infringing or otherwise violate this Agreement, the Acceptable Use Policy, or other applicable policy, **ITX** may take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, **Clients** and/or third parties. Such corrective action includes, but is not limited to: (a) issuing a warning; (b) immediately suspending or terminating the **Services**; (c) restricting or prohibiting access to any **Client Content** that is objectionable or otherwise violates this Agreement or applicable policy; and/or (d) disabling or removing hypertext links, **Client Content** or the content of any third party from **ITX Systems**. In the event **ITX** takes corrective action, **ITX** shall not refund any fees paid in advance of such corrective action. Without limiting the foregoing, it is the policy of **ITX** to terminate its services for repeated violations of the Acceptable Use Policy.

2.4.4 Disclosure Rights - To comply with applicable laws and lawful governmental requests, to protect **ITX Systems** and the customers of **ITX**, or to ensure the integrity and operation of the business and systems of **ITX**, **ITX** may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e., name, e-mail address, etc.), IP addressing and traffic information, usage history, and **Client Content** residing on **ITX Systems**.

3. Fees and Payment Terms

3.1 General - **Client** agrees to pay the set up and service fees in accordance with the **Services** selected by **Client** under this Agreement. For billing purposes, fractions of units shall be rounded up. All fees shall be billed by **ITX** in advance of providing the **Services** on a periodic basis as identified above. All charges are considered valid unless disputed in writing within thirty (30) days of the invoice date. **Client** agrees to pay all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the **Services** provided to **Client**, other than taxes based on the net income of **ITX**. **Client's** failure to fully pay any fees and taxes within thirty (30) days after the applicable due date will be deemed a breach of this Agreement, justifying the suspension of delivery of the **Services** and, in **ITX's** sole discretion, termination of this Agreement. Accounts in default are subject to an interest charge on the outstanding balance equal to the lesser of 1.5% per month or the maximum rate permitted by law. Any termination by **ITX** for **Client's** failure to pay will not relieve **Client** from paying past due fees plus interest. In the event of collection enforcement, **Client** shall be liable for any costs associated with such collection, including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees.

3.2 Price Changes - **Client** acknowledges that the **Services** are being provided on a monthly basis and **ITX** reserves the right to change the monthly fees associated with the **Services** selected by **Client**. In such event, **ITX** will give **Client** at least fifteen (15) days' notice prior to **Client's** next billing date. If **Client** does not agree to pay the new fees, **Client** may terminate this Agreement by providing written notice to **ITX** within the fifteen-day notice period. If **Client** does not elect to cancel the Service, **Client** hereby consents to pay the new fee under the same terms and conditions, including the method of payment, as the previous fee.

4. Term of Service

4.1 Term and Cancellation Policy - The Agreement shall remain in full force and effect for a term equal to that indicated above, and will continue in full force and effect thereafter until terminated by either party. After the initial term of this Agreement, **Client** may terminate this Agreement for any reason by providing thirty (30) days' prior written notice. **ITX** may immediately terminate or suspend the **Services** and this Agreement upon written notice for **Client's** or its users' violation of the Acceptable Use Policy or for any other reason. Upon any termination of this Agreement, **ITX** will not refund, and **Client** is not eligible for, any remaining portion of any fees that already have been charged.

4.2 Effect of Termination - Should this Agreement be terminated for any reason, **ITX** will not be liable to **Client** because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with **Client's** business, or for any other reason whatsoever flowing from such termination. **Client** is solely responsible for procuring any new or replacement service upon termination. Any termination of this Agreement shall not relieve **Client** of any obligations to pay fees and costs accrued prior to the termination date and any other amounts owed by **Client** to **ITX** as provided in this Agreement. Upon termination of this Agreement, the following sections shall survive and remain in effect in accordance with their terms: Sections 4.2 and 5 through 9.

5. Reservation of Rights

ITX is the exclusive owner of and retains all right, title and interest (including, but not limited to, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights thereto (collectively, "**Proprietary Rights**")) to all materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by **ITX** or its suppliers pursuant to this Agreement, and any know-how, methodologies, equipment, or processes used by **ITX** to provide the **Services** to **Client**. **Client** is the exclusive owner of and retains all right, title and interest (including all Proprietary Rights) to the **Client Content**. Note that **ITX** does not guarantee retention of **Client Content** beyond thirty (30) days after termination.

6. Warranties and Representations

6.1 Client - **Client** represents, warrants and covenants to **ITX** that: (a) the **Client Content** or its use shall not violate, misappropriate or infringe any Proprietary Rights or any other personal, privacy or moral right arising under the laws of any jurisdiction of any person or entity, nor shall same constitute a libel or defamation of any person or entity; (b) the **Client Content** will not contain any harmful components, including, but not limited to, viruses, trap doors, hidden sequences, hot keys, or time bombs; (c) **Client** has all right, power and authority necessary to enter into this Agreement and use the **Client Content** as described herein; and (d) **Client** shall comply with all applicable laws, rules and regulations (including, but not limited to, export control, decency, privacy and intellectual property laws).

6.2 Disclaimer - ITX exercises no control over, and accepts no responsibility for, third-party content of the information passing through the **ITX Systems**, network hubs and points of presence, or the Internet. **Client** ACKNOWLEDGES THAT **ITX** SYSTEMS (INCLUDING ANY SOFTWARE AND ANY OTHER ITEMS USED OR PROVIDED BY **ITX** IN CONNECTION WITH ANY SERVICES HEREUNDER) ARE PROVIDED "AS IS." **ITX** DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF THE SERVICES (INCLUDING THE DNS SERVICES THEREIN) OR **ITX** SYSTEMS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. **ITX** MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER THAT THE SERVICES AND **ITX** SYSTEMS WILL BE UNINTERRUPTED, ALWAYS ACCESSIBLE, FREE OF HARMFUL COMPONENTS, ACCURATE OR ERROR-FREE.

7. Limitation of Liability

7.1 General - ITX SHALL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF **ITX** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL **ITX** HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. THE TOTAL LIABILITY OF **ITX** TO **Client** FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO **ITX** BY **Client** UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY **ITX** HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK.

7.2 Security Risks - Client agrees that neither **ITX** nor its suppliers shall, under any circumstances, be held responsible or liable for situations where the data stored or communicated through the **Services** are accessed by third parties through illegal or illicit means, including situations where such data is accessed through the exploitation of security gaps, weaknesses or flaws (whether known or unknown to **ITX** at the time) which may exist in the **Services**.

8. Indemnification

Client will indemnify, hold harmless, and defend **ITX** and all employees, officers, directors and agents of **ITX** and any of its affiliates from and against any and all claims, suits, actions, demands or proceedings (whether threatened, asserted, or filed) and all related damages, losses, liabilities, cost and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or relating to: (a) any violation or breach by **Client** of any term, representation or warranty, or policy of this Agreement; (b) **Client's** unlawful or improper use of the **Services**; (c) any damages caused to **ITX Systems** by the **Client Content**; (d) any actual or alleged violation of any Proprietary Rights or non-proprietary rights (including, but not limited to, defamation, libel, rights of privacy or publicity) by **Client Content**.

9. General Provisions

9.1 Force Majeure - ITX shall be excused from performance hereunder to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable control, including but not limited to, acts of God (fire, storm, floods, earthquakes, etc.), civil disturbances, disruption of telecommunications, power or other essential services, or interruption or termination of service by the service provider being used by **ITX** to link its servers to the Internet, or any malicious or unlawful acts of any third party.

9.2 Waiver; Amendment - The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. Except as expressly provided by this Agreement, no term or condition of this Agreement may be modified unless done so in writing by authorized representatives of both parties.

9.3 Governing Law; Attorneys' Fees; Venue - This Agreement shall be governed by and construed in accordance with the laws of the State of New York. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Any legal actions arising out of this Agreement shall be brought in the state or federal courts of the State of New York and the parties shall submit to the jurisdiction of such courts.

9.4 Headings - Headings herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.

9.5 Notice - All notices or demands required to be given hereunder, or which may be given hereunder, shall be in writing and shall be addressed to the parties at their respective addresses set forth at the beginning of this Agreement. Either party shall have the right to change the name or address of the persons to whom notice shall be given pursuant hereto, by written notice of such change given pursuant hereto.

9.6 Severability - If and to the extent that any provision of this Agreement or portion thereof shall be determined by any legislature or court to be in whole or in part invalid or unenforceable, such provision or term shall be unenforceable only to the extent of such invalidity without invalidating the remaining provisions hereof and all other provisions of this Agreement shall remain in full force and effect, and the rights and obligations of the parties shall be construed and enforced accordingly. In addition, it is the intent of the parties hereto that any provision of the Agreement which is determined to be invalid or unenforceable due to the duration, scope, breadth, or otherwise, shall be interpreted in a reduced form which is not invalid or unenforceable with the intent that the restrictions imposed by this Agreement shall be construed and enforced in such a manner as to give them the broadest enforceable scope and effect.

9.7 Entire Agreement - This Agreement is the entire agreement between the parties herein relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, representations, agreements and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter during the term of this Agreement.