



## Hosting Terms and Conditions

These Hosting Terms and Conditions, together with any Work Authorization, Master Agreement, or the General Terms and Conditions, which are located at <http://www.itx.com/terms> and are incorporated by reference, constitute Client's entire agreement for services with ITX Corp. (collectively, the "Agreement"). By engaging ITX Corp. ("ITX") for hosting services, Client agrees to be bound by the following terms and conditions:

### H1. Managed Server Services

**H1.1 General** – Client has ordered, and ITX agrees to provide the Authorized Services or Service Options set forth in a Work Authorization. As part of the Authorized Services, ITX will (a) provide use of the ITX-owned computer equipment set forth in a Work Authorization using networking components, Internet connections and other hardware and software (collectively, "ITX Systems") and (b) secure and maintain connectivity with third-party telecommunication providers, all as necessary to place and connect the client-owned computer equipment to 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 Authorized Services hereunder. Subject to the specific terms of these Hosting Terms and Conditions, 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.

### H1.2 Domain Name Services

**H1.2.1 General** – At the election of Client and in accordance with the Authorized 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 Authorized 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 the 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 the 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.

**H1.2.2 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.

**H1.2.3 IP Addresses** – ITX may assign IP addresses to Client as part of the Authorized Services. Any IP addresses or other network numbers assigned to Client by ITX are and shall remain the property of ITX or its suppliers. If Client terminates the Agreement and/or ITX ceases to provide DNS 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.

**H1.3 Uptime Goal** – ITX shall use commercially reasonable efforts to make ITX Systems and the Services 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 the Agreement.

**H1.4 Bandwidth Allowances** – If Client uses bandwidth in excess of the Authorized Services ordered by Client, ITX may, in its sole discretion, assess Client with additional charges, suspend the performance of the Authorized Services, or terminate the Authorized Services. 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 Authorized Services and access to it is Client's responsibility. Client is responsible for any unauthorized access to the Authorized Services resulting in bandwidth usage exceeding the limits in the Authorized Services selected by Client and resultant charges.

## **H1.5 Modifications**

**H1.5.1 Modifications to Authorized Services or Service Options** – ITX reserves the right to change or modify the Authorized Services or any Service Options (except for pricing) at any time, in its sole discretion. ITX will send a notice to Client of any such changes. Changes to Authorized Services or Service Options will be effective the later of sixty (60) days or Client's next monthly billing cycle. If Client does not agree to such changes Client's sole remedy is to terminate the Authorized Services pursuant to Section H4 of these Hosting Terms and Conditions (notwithstanding any notice period).

**H1.5.2 To Terms and Conditions, Policies or Guidelines** – Changes to these Hosting Terms and Conditions, ITX General Terms and Conditions, any policy or guidelines governing the Authorized Services, including the ITX Acceptable Use Policy, may be made by ITX at any time, in its sole discretion, and shall be effective upon posting to the ITX Website. Client's continued use of the Authorized Services following ITX posting such changes on the ITX Website will constitute Client's acceptance of such changes. If Client does not agree to such changes Client's sole remedy is to terminate the Authorized Services pursuant to Section H4 of these Hosting Terms and Conditions (notwithstanding any notice period).

## **H2. Client Content; Acceptable Use**

**H2.1 Client Content** – Client hereby grants ITX a limited, non-exclusive, royalty-free, non-sublicensable license to 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 Authorized 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 or be transmitted through ITX Systems.

**H2.2 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 these Hosting Terms and Conditions, 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.

**H2.3 Compatibility** – Client is responsible for ensuring that the Client Content will be and 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. ITX reserves the right to block 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.

## **H2.4 Acceptable Use**

**H2.4.1 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 Website. 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.

**H2.4.2 Excluded Services** – ITX will not provide services and will terminate existing services immediately without compensation if the equipment used by Client is used for 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.

**H2.4.3 Rights of ITX** – ITX may inspect the Client Content or investigate any alleged violation of the 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 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 the 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 the 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.

**H2.4.4 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. Notwithstanding the foregoing, ITX will not access or distribute any data contained in Client's database(s) to any person or

entity unless ITX is legally required to do so by law, regulation, or order of a court of competent jurisdiction.

### **H3. Fees and Payment Terms**

**H3.1 General** – Client agrees to pay the set up and service fees in accordance with the Authorized Services selected by Client under the Work Authorization and in accordance with ITX’s General Terms and Conditions and these Hosting Terms and Conditions. All fees shall be billed by ITX in advance of providing the Services on a periodic basis as identified above.

**H3.2 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 after the initial term. In such event, ITX will give Client at least sixty (60) days’ notice prior to Client’s next billing date. If Client does not agree to pay the new fees, Client may terminate the Agreement by providing written notice to ITX within the sixty-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.

### **H4. Term of Service; Termination**

**H4.1 Term** – These Hosting Terms and Conditions shall be effective on the Effective Date set forth in a Managed Server Work Authorization. The Agreement shall remain in full force and effect for a term equal to that indicated in a Work Authorization. Upon expiration of the Term, the Agreement shall renew automatically for successive renewal terms, each for a period of time equal to the original Term, unless either Party serves the other Party with written notice of such Party’s intent not to renew the Agreement at least sixty (60) days prior to the expiration of the then current Term.

**H4.2 Termination** – ITX may immediately terminate or suspend the Authorized Services and the 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 the Agreement, ITX will not refund, and Client is not eligible for, any remaining portion of any fees that already have been charged.

**H4.2 Effect of Termination** – Client is solely responsible for procuring any new or replacement service upon termination. Any termination of the Authorized Service 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 the Work Authorization. Upon termination of the Authorized Services, the following sections shall survive and remain in effect in accordance with their terms: Sections H4.2 and H5 through H9.

**H5. 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 related to providing the Authorized Services, and any know-how, methodologies, equipment, or processes used by ITX to provide the Authorized Services to Client. Client is the exclusive owner of and retains all right, title and interest (including all Proprietary Rights) to the Client Content. ITX does not guarantee retention of Client Content beyond thirty (30) days after termination.

## **H6. Warranties and Representations**

**H6.1 Client Representations** – 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 the 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).

**H6.2 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.

## **H7. Limitation of Liability**

**H7.1 General** – 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 AUTHORIZED SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. THE FEES FOR THE AUTHORIZED SERVICES SET BY ITX HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK.

**H7.2 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 Authorized 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 Authorized Services.

**H8. Client Indemnification of ITX** – 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 the Agreement; (b) Client's unlawful or improper use of the Authorized 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.

**H9. Conflict of Terms** – In the event of a conflict between a term contained in these Hosting Terms and Conditions and a term contained in any Work Authorization and/or the ITX General Terms and Conditions, the terms of these Hosting Terms and Conditions shall always control and supersede conflicting terms in those documents.