

## Terms for Local Business Directory (Google)

This Marketing agreement is entered effective on the date stated in the electronic order form, bay and between NDM Network Inc., a Florida Corporation, and the client stated on the order submitted. Client certifies that all the information provided is true, correct and accurate, client also acknowledges and agrees to the terms of this agreement, paragraphs 1 thru3,4,customer service paragraphs 1 thru 5 and does so by his/her submission along with recorded verification.

### Terms and Conditions

1. Your Account 1.1 *Creation* – Account creation and activation is subject to the receipt of appropriate payment. 1.2 *Payment* – NDM Network Inc., local business listing submission is based on the agreed upon set up fee and monthly fee. Initial billing of the set up fee is submitted upon the completion of the signup process, at which point recurring billing will be initiated on the date stated in the order agreement. All future monthly recurring charges will be submitted on the anniversary of the start date. Prices are subject to change; however, you will be notified with 45 days notice, via you supplied contact email address, of any such changes before they go into effect, and you will be given the opportunity to cancel your subscription should you so wish. 1.3 *Duration* – Your account will remain active from the point of account creation to the point at which your account is cancelled in accordance with any of the points detailed in Section 2 (Account Termination)
2. Account Termination\* your account will be terminated under any of the following conditions: 2.1 *Subscription Cancellation* – You may cancel your subscription at any time by informing NDM Network Inc. in writing. Please allow three full business days from the point at which your cancellation request is submitted for the request to be processed, at which point all future billings to your account are terminated. Accounts will be closed upon request for cancellation, regardless of the point in the payment cycle at which this occurs. 2.2 *Subscription Failure* – If a due subscription payment fails to be made, your account may be canceled. Potential reasons for subscription payments failing include the card number changing, the card expiring, your billing address having changed, or having insufficient funds available.
3. Refunds and Guarantee Policy – Per NDM Network Inc., the refund and guarantee policy is bound by the following conditions: 3.1 Refunds will be provided if your business is not listed in local search of Google within 6 to 8 weeks from the date of your order being verified. If we are unable to show you evidence that your business listings are showing up in the above-mentioned search engine within the above-stated time-frame, then you are entitled to a full refund of the set up fee. 3.2 If the client does not provide all necessary information or respond to Google verification process in a timely manner (one day by phone or three days by mail), the client will void the policy stated in paragraph 3.1. 3.3 We will optimize your business listing for ten or more search phrases. Your business will show up in the top ten for at least the number of search phrases purchased. Search phrases are defined as: a keyword or keywords relevant to your core business, followed by the city and state of the address stated in the submission form. After the initial 6 to 8 weeks, if we are unable to show you evidence that your business listings show up in the top ten of Google Maps, then you are entitled to a refund of you monthly fee. 3.4 We provide no other explicit guarantees regarding results from our service. Specifically, we provide no guarantees as to hits, rankings or other metrics.

Terms for Hosting

NDM Network Inc. User Agreement

This User Agreement ("Agreement") is an agreement between NDM Network, and the party set forth in the related Registration Form ("User" or "You" and "Your") incorporated herein by reference (together with any subsequent Registration Forms or other online signup, acceptance or order form submitted by User, the "Registration Form"), and applies to the purchase of all services ordered by User on the Registration Form (collectively, the "Services"). As used herein the term "User" and "You" shall also include any and all users, Customers, subscribers, affiliates (including without limitations Users or non-Users to whom NDM Network provides links or banners to promote the services or products of NDM Network or any third party the services or products of which are offered by or obtained through or in connection with NDM Network), resellers or others (i) who sign up for, use or obtain services or products from NDM Network or from any third party services or products of which are offered by or obtained through or in connection with NDM Network, or (ii) who visit the Web sites of NDM Network or of any such third party.

PLEASE READ THIS AGREEMENT CAREFULLY.

SIGNING UP FOR THE SERVICES CREATES A CONTRACT BETWEEN YOU AND US, CONSISTING OF THE ORDER, THE APPLICABLE SERVICE DESCRIPTION AND THIS USER AGREEMENT. YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING OUR ACCEPTABLE USE POLICY. YOUR USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

1. **Acceptable Use Policy.** Under this Agreement, User shall comply with NDM Network's then current Acceptable Use Policy ("AUP"), as amended, modified or updated from time to time by NDM Network, and other agreements which currently can be viewed under the Terms of Service section of this Web site (collectively, the "Terms of Service"), and which is incorporated in this Agreement by reference. User hereby acknowledges that it has reviewed the AUP and that the terms of the AUP are incorporated herein by reference. In the event of any inconsistencies between this Agreement and the AUP, the terms of the AUP shall govern. NDM Network does not intend to systematically monitor the content that is submitted to, stored on or distributed or disseminated by User via the Service (the "User Content"). User Content includes content of User's and/or users of User's Web site. Accordingly, under this Agreement, You will be responsible for Your users content and activities on Your Web site. Notwithstanding anything to the contrary contained in this Agreement, NDM Network may immediately take corrective action, including removal of all or a portion of the User Content, disconnection or discontinuance of any and all Services, or termination of this Agreement in the event of notice of possible violation by User of the AUP. In the event NDM Network takes corrective action due to a violation of the AUP, NDM Network shall not refund to User any fees paid in advance of such corrective action. User hereby agrees that NDM

Network shall have no liability to User or any of User's users due to any corrective action that NDM Network may take (including, without limitation, suspension, termination or disconnection of Services).

**2. Term; Termination; Cancellation Policy.**

- a. The initial term of this Agreement shall be as set forth in the Registration Form (the "Initial Term"). The Initial Term shall begin upon commencement of the Services to User. After the Initial Term, this Agreement shall automatically renew. **ADDITIONALLY AFTER THE INITIAL TERM, YOU ACKNOWLEDGE, AGREE AND AUTHORIZE US TO AUTOMATICALLY BILL AND/OR CHARGE ON YOUR CREDIT CARD FOR SUCCESSIVE TERMS OF EQUAL LENGTH AS THE INITIAL TERM, UNLESS TERMINATED OR CANCELLED BY EITHER PARTY AS PROVIDED IN THIS SECTION.** The Initial Term and all successive renewal periods shall be referred to, collectively, as the "Term".
  
- b. This Agreement may be terminated or cancelled;
  - i. by either party by giving the other party thirty (30) days prior written notice provided that we may charge You a minimum \$50.00 charge as an early cancellation fee,
  
  - ii. by NDM Network in the event of nonpayment by User,
  
  - iii. by NDM Network, at any time, without notice, if, in NDM Network's sole and absolute discretion and/or judgment, User is in violation of any term or condition of this Agreement and related agreements, AUP, or User's use of the Services disrupts or, in NDM Network's sole and absolute discretion and/or judgment, could disrupt, NDM Network's business operations and/or
  
  - iv. by NDM Network as provided herein.

- c. If You cancel this Agreement, upon proper notice to NDM Network, prior to the end of the Initial Term or any Term thereafter,
  - i. You shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation;
  - ii. NDM Network may (but is not obligated to) refund to You all pre-paid fees for basic hosting services for the full months remaining after effectiveness of cancellation (i.e., no partial month fees shall be refunded), less any setup fees, cancellation fees, and any discount applied for prepayment, provided that, You are not in breach of any terms and conditions of this AUP, User Agreement, Anti-Spamming Policy or Domain Policy; and/or
  - iii. We may charge You one hundred percent (100%) of all charges for all Services for each month remaining in the Term (other than basic hosting fees as provided in (ii) above).
  - iv. Any cancellation request shall be effective thirty (30) days after receipt by NDM Network, unless a later date is specified in such request.
- d. NDM Network may terminate this Agreement, without penalty,
  - i. if the Services are prohibited by applicable law, or become impractical or unfeasible for any technical, Terms of Service or regulatory reason, by giving User as much prior notice as reasonably practicable; or
  - ii. immediately, if NDM Network determines that User's use of the Services, the Web site or the User Content violates any NDM Network term of service, including the AUP, User Agreement, Anti-Spam Policy, Privacy Policy or Domain Policy. If NDM Network cancels this Agreement prior to the end of the Term for Your breach of this Agreement and related agreements, including the AUP, User Agreement, Anti-Spam Policy, Privacy Policy or Domain Policy or User's use of the Services disrupts our network, NDM Network shall not refund to You any fees paid in advance of such cancellation and You shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation; further, We may

charge You 100% of all charges for all Services for each month remaining in the Term and NDM Network shall have the right to charge You an administrative fee of a minimum of \$50.00.

- e. Upon termination of this Agreement for any cause or reason whatsoever, neither party shall have any further rights or obligations under this Agreement, except as expressly set forth herein. The provisions of Sections 2(e), 3, 4, 12, 13, 17, 19 and 20 of this Agreement shall survive the expiration or termination of this Agreement for any cause or reason whatsoever, and, notwithstanding the expiration or termination of this Agreement, the parties shall each remain liable to the other for any indebtedness or other liability theretofore arising under this Agreement. Termination of this Agreement and retention of pre-paid fees and charges shall be in addition to, and not be in lieu of, any other Terms of Service or equitable rights or remedies to which NDM Network may be entitled.
  
- f. If an account with a thirty (30) day money-back guarantee is purchased and cancelled within thirty (30) days of sign-up, the User will, upon request, receive a full refund of all hosting fees. Requests for these refunds should be made through our Support Team. Refunds made for a thirty (30) day money-back guarantee will not include domain registration fees, setup fees, or any fees for additional services that are purchased in the first thirty (30) days.

The thirty (30) day money-back guarantee is valid for credit-card payments only. Due to the costs associated with processing payments made by other methods, we are not able to offer the thirty (30) day money-back guarantee for other payment methods.

- g. You have ninety (90) days to dispute any charge or payment processed by NDM Network. If you have a question concerning a charge you believe is incorrect, please contact us at [billing@NDM Network-inc.com](mailto:billing@NDM Network-inc.com)

### **3. User's Responsibilities.**

- a. User is solely responsible for the quality, performance and all other aspects of the User Content and the goods or services provided through the User Web site.

- b. User will cooperate fully with NDM Network in connection with NDM Network's provision of the Services. User must provide any equipment or software that may be necessary for User to use the Services. Delays in User's performance of its obligations under this Agreement will extend the time for NDM Network's performance of its obligations that depend on User's performance on a day for day basis. User must provide complete, correct and genuine contact information in the Registration Form and update such information as necessary from time to time so it remains complete, correct and genuine at all times; failure to do so may result in suspension or cancellation of Services. User will notify NDM Network of any change in User's mailing address, telephone, electronic mail or other contact information.
  
- c. User assumes full responsibility for providing end users with any required disclosure or explanation of the various features of the User Web site and any goods or services described therein, as well as any rules, terms or conditions of use.
  
- d. Because the Services permit Users to electronically transmit or upload content directly to the User Web site, User shall be fully responsible for uploading all content to the User Web site and supplementing, modifying and updating the User Web site, including all back-ups. User is also responsible for ensuring that the User Content and all aspects of the User Web site are compatible with the hardware and software used by NDM Network to provide the Services, as the same may be changed by NDM Network from time to time. NDM Network shall not be responsible for any damages to the User Content, the User Web site or other damages or any malfunctions or service interruptions caused by any failure of the User Content or any aspect of the User Web site to be compatible with the hardware and software used by NDM Network to provide the Services.
  
- e. User is solely responsible for making back-up copies of the User Web site and User Content.
  
- f. NDM Network does not maintain backup copies of User Web sites or e-mail. NDM Network cannot guarantee that the contents of a Web site will never be deleted or corrupted, or that a backup of a Web site will always be available. Users should always copy all content of a Web site to a local computer and NDM Network strongly suggest that Users make an additional copy (on tape, CD,

multiple floppies, another desktop, or elsewhere) to ensure the availability of the files.

- g. User is responsible for maintaining the confidentiality of login and billing information. NDM Network is not liable for any account disputes that may arise between various parties holding account login information. NDM Network is not responsible for any changes made to the account or any information that has been modified by User, or any parties authorized by User, to access the vDeck. User is responsible for updating and maintaining contact and billing information with NDM Network. Any changes to the User contact information must be made using the account vDeck or by contacting our Support Team. User is responsible for ensuring that NDM Network is able to notify the User for technical, billing or other issues or purposes deemed necessary by NDM Network to maintain the account.
  
- h. Free Web Hosting. If you have enrolled in a free plan, your Web site may carry advertising HTML for NDM Network or a third party, which could include different types of advertisements, including banners or pop-ups. If you would prefer not to have such advertising on your Web site, we encourage you to sign up for a plan that does not include advertising. Our Support Team can help you choose the plan that is right for you

#### **4. User's Representations and Warranties.**

- a. User hereby represents and warrants to NDM Network, and agrees that during the Initial Term and any Term thereafter User will ensure that:
  - i. User is the owner or valid licensee of the User Content and each element thereof, and User has secured all necessary licenses, consents, permissions, waivers and releases for the use of the User Content and each element thereof, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by NDM Network to pay any fees, residuals, guild payments or other compensation of any kind to any Person;
  
  - ii. User's use, publication and display of the User Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right

of any person, including, without limitation, any contractual, statutory or common law right or any "moral right" or similar right however denominated;

- iii. User will comply with all applicable laws, rules and regulations regarding the User Content and the User Web site and will use the User Web site only for lawful purposes; and
  - iv. User has used its best efforts to ensure that the User Content is and will at all times remain free of all computer viruses, worms, Trojan horses and other malicious code.
- b. User shall be solely responsible for the development, operation and maintenance of User's Web site, online store and electronic commerce activities, for all products and services offered by User or appearing online and for all contents and materials appearing online or on User's products, including, without limitation
- i. the accuracy and appropriateness of the User Content and content and material appearing in its store or on its products,
  - ii. ensuring that the User Content and content and materials appearing in its store or on its products do not violate or infringe upon the rights of any person, and
  - iii. ensuring that the User Content and the content and materials appearing in its store or on its products are not defamatory or otherwise illegal. User shall be solely responsible for accepting, processing and filling User orders and for handling User inquiries or complaints. User shall be solely responsible for the payment or satisfaction of any and all taxes associated with its Web site and online store.
- c. User grants NDM Network the right to reproduce, copy, use and distribute all and any portion of the User Content to the extent needed to provide and operate the Services

- d. In addition to transactions entered into by You on Your behalf, You also agree to be bound by the terms of this Agreement for transactions entered into on Your behalf by anyone acting as Your agent, and transactions entered into by anyone who uses Your account, whether or not the transactions were on Your behalf.
  
5. **License to NDM Network.** User hereby grants to NDM Network a non-exclusive, royalty-free, worldwide right and license during the Initial Term and any Term thereafter to do the following to the extent necessary in the performance of Services under the Order:
  - a. digitize, convert, install, upload, select, order, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, publicly display, publicly perform and hyperlink the User Content; and
  
  - b. make archival or back-up copies of the User Content and the User Web site.
  
  - c. Except for the rights expressly granted above, NDM Network is not acquiring any right, title or interest in or to the User Content, all of which shall remain solely with User.
  
  - d. NDM Network, in its sole discretion, reserves the right (i) to deny, cancel, suspend, transfer or alter, modify, correct, amend, change, program, or take any other corrective action to protect the integrity and stability of the Services (including altering, modifying, correcting, amending, changing, programming, or taking any other corrective action regarding any malicious code, software or related abusive activity, User Content and/or Web site(s)), and/or (ii) to comply with any applicable laws, government rules, or requirements, requests of law enforcement, or to avoid any liability, civil or criminal. User further agrees that NDM Network shall not be liable to User for any loss or damages that may result from such conduct.
  
6. **Billing and Payment.**
  - a. User will pay to NDM Network the service fees for the Services in the manner set forth in the Registration Form.

- b. NDM Network may increase the Service Fees (i) in the manner permitted in the service description and (ii) at any time on or after expiration of the Initial Term by providing ten (10) days prior written notice thereof to User.
  
- c. The Service Fees do not include any applicable sales, use, revenue, excise or other taxes imposed by any taxing authority with respect to the Services or any software provided hereunder (excluding any tax on NDM Network's net income). All such taxes may be added to NDM Network's invoices for the fees as separate charges to be paid by User. All fees are fully earned when due and non-refundable when paid.
  
- d. Unless otherwise specified, all initial fees shall be payable upon sign-up, and all subsequent fees and related charges shall be due and payable when billed, if by credit card, or if not by credit card, within thirty (30) days after the date of the invoice. If any invoice is not paid within seven (7) days after the date of the invoice, NDM Network may charge User a late fee of \$15.00 for; in addition any amounts payable to NDM Network not paid when due will bear interest at the rate of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less.
  
- e. If NDM Network collects any payment due at law or through an attorney at law or under advice therefrom or through a collection agency, or if NDM Network prevails in any action to which the User and NDM Network are parties, User will pay all costs of collection, arbitration and litigation, including, without limitation, all court costs and NDM Network's reasonable attorneys' fees.
  
- f. If any check is returned for insufficient funds NDM Network may impose a minimum processing charge of \$25.00.
  
- g. In the event that any amount due to NDM Network is not paid when due, NDM Network, in its sole discretion, may immediately terminate this Agreement, and/or withhold or suspend Services.

- h. There may be a minimum \$50.00 charge to reinstate accounts that have been suspended or terminated.
- i. Wire transfers will be assessed a minimum \$35.00 charge.
- j. There may be a minimum \$35.00 charge for all credit card chargebacks.
- k. User acknowledges and agrees that NDM Network may pre-charge User's fees for the Services to its credit card supplied by User during registration for the Initial Term.
- l. YOU ACKNOWLEDGE, AGREE AND AUTHORIZE US TO AUTOMATICALLY BILL AND/OR CHARGE ON YOUR CREDIT CARD FOR SUCCESSIVE TERMS OF EQUAL LENGTH AS THE INITIAL TERM, UNLESS TERMINATED OR CANCELLED BY EITHER PARTY AS PROVIDED IN SECTION.

## **7. Payment Policies - General**

- a. Accounts will not be activated or reactivated without prior payment.
- b. All hosting fees and domain name renewal fees are due on or before the due date of the renewing account and/or domain name.
- c. Incomplete, incorrect or questionable signup information can result in an account being suspended or terminated or NOT being activated. Some accounts may be placed on hold for up to 72 hours, pending review of information received.

- d. Any losses or expenses experienced by the User, due to actions taken by NDM Network in response to Users non-payment, are not the responsibility of NDM Network.

## **8. Payment Policies - Payment Processing**

- a. NDM Network's preferred method of payment is credit card.
  
- b. By purchasing our hosting services, you are agreeing to allow NDM Network to place your account on a recurring payment plan. The account will automatically be re-billed according to the terms of the plan you select.
  
- c. You grant NDM Network permission to charge your credit card for any and all services you request, including, but not limited to, hosting and/or domain name renewals.
  
- d. If we are unable to process a payment for your hosting plan by its due date, your account will be cancelled for non-payment and you will not be able to access your Web site or e-mail.
  
- e. When an account is cancelled, all copies of the Web site and e-mail files are permanently and irretrievably removed from our servers.
  
- f. If an account has been suspended for non-payment, it will only be reactivated upon payment of all overdue fees.
  
- g. If we make any refunds due to charges you dispute with your credit card NDM Network, we will cancel your account. The cancelled account will only be reactivated once all disputed/refunded fees are resolved satisfactorily, and we receive payment for any and all administrative fees incurred by NDM Network as a result of your dispute or charge-back request. We cannot guarantee any files or e-mail will be available upon reactivation.

- h. It is a violation of this Agreement for you to misuse or fraudulently use credit cards, charge cards, electronic funds transfers, and/or electronic checks. A determination of such misuse or fraudulent use shall be in our sole discretion. Further, we may report all such misuses and fraudulent uses (as determined by us in our sole discretion) to appropriate government and law enforcement authorities, credit reporting services, financial institutions and credit card companies. In these situations, you shall have waived any and all rights to privacy.
9. **NDM Network as Reseller or Licensor.** NDM Network is acting only as a reseller or licensor of certain services, hardware, software and equipment used in connection with the products and/or Services that were or are manufactured or provided by a third party ("Non-NDM Network Product"). NDM Network shall not be responsible for any changes in the Services that cause the Non-NDM Network Product to become obsolete, require modification or alteration, or otherwise affect the performance of the Services. Any malfunction or manufacturer's defects of Non-NDM Network Product either sold, licensed or provided by NDM Network to User or purchased directly by User used in connection with the Services will not be deemed a breach of NDM Network's obligations under this Agreement. Any rights or remedies User may have regarding the ownership, licensing, performance or compliance of Non-NDM Network Product are limited to those rights extended to User by the manufacturer of such Non-NDM Network Product. User is entitled to use any Non-NDM Network Product supplied by NDM Network only in connection with User's permitted use of the Services. User shall use its best efforts to protect and keep confidential all intellectual property provided by NDM Network to User through any Non-NDM Network Product and shall make no attempt to copy, alter, reverse engineer, or tamper with such intellectual property or to use it other than in connection with the Services. User shall not resell, transfer, export or re-export any Non-NDM Network Product, or any technical data derived therefrom, in violation of any applicable United States or foreign law.
10. **Internet Protocol (IP) Address Ownership.** If NDM Network assigns User an Internet Protocol ("IP") address for User's use, the right to use that IP address shall belong only to NDM Network, and User shall have no right to use that IP address except as permitted by NDM Network in its sole and absolute discretion in connection with the Services, during the term of this Agreement. NDM Network shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to User by NDM Network, and NDM Network reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion.

**11. Caching. User expressly;**

- a. grants to NDM Network a license to cache the entirety of the User Content and User's Web site, including content supplied by third parties, hosted by NDM Network under this Agreement and
- b. agrees that such caching is not an infringement of any of User's intellectual property rights or any third party's intellectual property rights.

**12. CPU Usage.** User agrees that User shall not use excessive amounts of CPU processing on any of NDM Network's servers. Any violation of this policy may result in corrective action by NDM Network, including assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken in NDM Network's sole and absolute discretion. If NDM Network takes any corrective action under this section, User shall not be entitled to a refund of any fees paid in advance prior to such action.

**13. Bandwidth and Disk Usage.** NDM Network provides Users with bandwidth, disk space and other resources, such as e-mail and/or file-transfer-protocol ("FTP") accounts, the amount of which is defined in NDM Network's web pages describing the package of Services purchased at the time of purchase. In some cases, NDM Network may not establish a specific amount of Bandwidth and/or Disk Usage, and refer to that as "Unlimited" disk space or bandwidth. In all cases, the Services are intended for normal use only, and any activity that results in excessive usage that is inconsistent with normal usage patterns is strictly prohibited. NDM Network reserves the right to suspend, discontinue or delete the accounts of Users whose disk space or bandwidth utilization results in or presents the risk of degradation of service to other customers, regardless of the amount of disk space or bandwidth included in the User's plan. User agrees that such bandwidth and disk usage shall not exceed the amounts set by NDM Network for the Services purchased (the "Agreed Usage") and is additionally subject to normal usage guidelines established by NDM Network as in effect from time to time. These allotments are optimized and dedicated towards serving the Content and User's electronic mail services related solely to User's web hosting account(s) with NDM Network.

Hosting space is intended for normal use only, and is limited to Web files, e-mail and content of the hosted Web sites, not for storage of media or other data. Hosting space may not be used as offsite storage for electronic files or for third party electronic mail or FTP hosts. You are responsible for removing any files which do not meet these requirements, and for adhering to any hosting space (disk usage) limits allocated to your account(s). Failure to do so may result in removal and deletion of such materials, and/or

in discontinuation of your services or account, which actions we may take in our sole discretion.

NDM Network will monitor User's bandwidth and disk usage. NDM Network, in its sole discretion, shall have the right to take any corrective action if User's bandwidth or disk usage exceeds the Agreed Usage, normal usage, or is used for other improper storage or usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, removal or deletion of User's Web site, User Content, User's electronic mail services and/or other materials or termination of this Agreement, which actions may be taken in NDM Network's sole and absolute discretion.

If NDM Network takes any such corrective action under this section, User shall not be entitled to a refund or credit of any fees paid prior to such action. User will comply with all applicable laws, rules and regulations regarding User's Web site, User Content and/or User's electronic mail services and will each, including bandwidth, disk space and other resources only for lawful purposes. User may not utilize: the Services to copy material from third parties (including text, graphics, music, videos or other copyrightable material) without proper authorization; the Services to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party; the Services to traffic in illegal drugs, gambling, obscene materials or any other products or services that are prohibited under applicable law; the Services to export encryption software to points outside the United States in violation of applicable export control laws; the Services to forge or misrepresent message headers, whether in whole or in part, to mask the originator of the message. If NDM Network learns or discovers that User is violating any law related to User's Web site, User Content and/or User's electronic mail services, use of bandwidth, disk usage or Agreed Usage, NDM Network may be obligated to or may in its discretion inform the necessary law enforcement and/or any related agency(ies) of such conduct and may provide such agency(ies) with information related to User, User's Web site, User Content and/or User's electronic mail.

User is responsible for bandwidth utilization, and monitoring bandwidth use to ensure the Web site does not exceed the bandwidth allocated for the account(s) and otherwise complies with this Agreement. NDM Network will use commercially reasonable efforts to e-mail Users who are at or near their bandwidth utilization limits, but NDM Network does not take responsibility if e-mail notification(s) is not received by the User. NDM Network reserves the right to discontinue service through the beginning of the next month for your account in the event that it exceeds the bandwidth allotment.

**14. Parked Domain Services.** In addition to the applicable terms and conditions contained herein:

- a. If User signs up to register and park a domain name with NDM Network, User agrees to pay NDM Network the annual fee set forth on our Web site (the "Parked Page Services"). User's annual billing date will be determined based on

the month User establishes the Parked Page Services with NDM Network. Payments are non-refundable. If for any reason NDM Network is unable to charge User's payment method for the full amount owed NDM Network for the service provided, or if NDM Network is charged a penalty for any fee it previously charged to Your payment method, User agrees that NDM Network may pursue all available remedies in order to obtain payment. User agrees that among the remedies NDM Network may pursue in order to effect payment, shall include but will not be limited to, immediate cancellation without notice to User of User's service. NDM Network reserves the right to charge a reasonable service fee for administrative tasks outside the scope of its regular services. These include, but are not limited to, User service issues that cannot be handled over e-mail but require personal service, and disputes that require legal services. These charges will be billed to the payment method we have on file for User.

- b. User agrees to be responsible for notifying NDM Network should User desire to terminate use of any of the Parked Page Services, including, but not limited to, those purchased. Notification of User's intent to terminate must be provided to NDM Network no earlier than thirty (30) days prior to User's billing date but no later than ten (10) days prior to the billing date. In the absence of notification from User, NDM Network will automatically continue the Parked Page Services indefinitely and will charge User's payment method that is on file with NDM Network, at NDM Network's then current rates. It is User's responsibility to keep their payment method information current, which includes the expiration date if using a credit card. In the event User terminates the Parked Page Services, moving their Web site off of the NDM Network hosting servers is User's responsibility. NDM Network will not transfer or FTP such Web site to another provider. Any change by User of their name-server is not deemed cancellation of the Parked Page Services.
  
- c. NDM Network will provide User with the Parked Page Services as long as User abides by the terms and conditions set forth herein and in each of NDM Network's policies and procedures.
  
- d. By using any of the Parked Pages Services, User agrees that NDM Network may point the domain name or DNS to one of NDM Network's or NDM Network's affiliates web pages, and that they may place advertising on User's web page and that NDM Network specifically reserves this right. User shall have no right to any compensation and shall not be entitled and shall have no right to receive any funds related to the monetization of User's Parked Pages.

- e. User agrees to indemnify and hold harmless NDM Network for any complications arising out of use of the Parked Page Services, including, but not limited to, actions NDM Network chooses to take to remedy User's improper or illegal use of a Web site hosted by NDM Network. User agrees it is not be entitled to a refund of any fees paid to NDM Network if, for any reason, NDM Network takes corrective action with respect to any improper or illegal use of the Parked Page Services.
- f. If a dispute arises as a result of one or more of User's Parked Pages, User will indemnify, defend and hold NDM Network harmless for damages arising out of such dispute. User also agrees that if NDM Network is notified that a complaint has been filed with a governmental, administrative or judicial body, regarding a Web site hosted by NDM Network, that NDM Network, in its sole discretion, may take whatever action NDM Network deems necessary regarding further modification, assignment of and/or control of the Web site to comply with the actions or requirements of the governmental, administrative or judicial body until such time as the dispute is settled.

15. **InstallCentral Terms.** InstallCentral automates the installation of a given open source application. Users are free to install open source applications independently of InstallCentral by following the instructions provided by NDM Network or the organization that developed the open source application. When a User uses an open source application, the User licenses it from the open source provider, not from NDM Network.

- a. We do not provide support for the application once the application has been successfully installed; we provide support only for the installation or upgrade process. Any support requests regarding actual use of the application must be directed to the organization or NDM Network that developed the application.
- b. The User is responsible for creating back-ups before upgrading to the next version.
- c. We cannot guarantee that the version we currently provide is the latest one being distributed by the vendor.

- d. Any security risks including, but not limited to, hacking, phishing and information piracy are the sole responsibility of the User.
- e. We reserve the right to discontinue applications managed by InstallCentral at any time.
- f. InstallCentral applications are installed at the User's own risk. We can not be held liable for lost data or damage caused by open source applications provided through InstallCentral.

**16. Standard and Private-Label Reseller Programs.** In addition to all terms and conditions described in this Agreement, the following shall also be applicable to NDM Network Wholesale, Wholesale Plus and Private-Label Resellers;

- a. The Reseller agrees, on behalf of both the Reseller and each User signed up by the Reseller, to comply with these Terms of Service.
- b. In the event that a Reseller or a Reseller's User is determined to be in violation of the Terms of Service, the Reseller shall, upon receipt of notice of the violation, take prompt action to ensure that the account in question is updated to be in full compliance with the Terms of Service.
- c. NDM Network is not responsible for the actions or misrepresentations of Resellers. The Reseller hereby agrees to indemnify NDM Network from and against any and all claims made by any User that result from the Reseller's misrepresentation, breach of the Terms of Service or other improper actions by the Reseller.
- d. NDM Network reserves the right to revise its Wholesale, Wholesale Plus and Private-Label Reseller Programs, AUP and the Terms of Service at any time. Changes shall take effect when posted online.

- e. Users who have been signed up by Resellers agree to operate their Web sites in accordance with the Terms of Service.
  
- f. Resellers cannot make any modifications to the NDM Network Terms of Service. Any such alterations shall be deemed a violation of the Terms of Service and could result in a cancellation of a Reseller's account(s). NDM Network is not responsible for any modifications made to the Terms of Service by Resellers.
  
- g. Resellers in the Wholesale Reseller Program assume all responsibility for billing and technical support for each of their Users. NDM Network reserves the right to refuse inquiries made to the Support Team from the Customers of Resellers in the Wholesale Reseller Program.

## **17. Property Rights.**

- a. NDM Network hereby grants to User a limited, non-exclusive, non-transferable, royalty-free license, exercisable solely during the term of this Agreement, to use NDM Network technology, products and services solely for the purpose of accessing and using the Services. User may not use NDM Network's technology for any purpose other than accessing and using the Services. Except for the rights expressly granted above, this Agreement does not transfer from NDM Network to User any NDM Network technology, and all rights, titles and interests in and to any NDM Network technology shall remain solely with NDM Network. User shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the NDM Network.
  
- b. NDM Network owns all right, title and interest in and to the Services and NDM Network's trade names, trademarks, service marks, inventions, copyrights, trade secrets, patents, know-how and other intellectual property rights relating to the design, function, marketing, promotion, sale and provision of the Services and the related hardware, software and systems ("Marks"). Noting in this Agreement constitutes a license to User to use or resell the Marks.

**18. Disclaimer of Warranty.** User agrees to use all Services and any information obtained through or from NDM Network, at User's own risk. User acknowledges and agrees that NDM Network exercises no control over, and accepts no responsibility for, the content of the information passing through NDM Network's host computers, network hubs and points of presence or the Internet. THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN AS IS, AS AVAILABLE BASIS. NEITHER WE NOR ANY OF OUR PARENT, SUBSIDIARY OR AFFILIATED CORPORATIONS, OR ANY OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, AGENTS, ATTORNEYS, SUPPLIERS, THIRD-PARTY INFORMATION PROVIDERS, MERCHANTS, LICENSORS OR THE LIKE (EACH, A "RELATED PERSON") MAKE ANY WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, FOR THE SERVICES OR ANY EQUIPMENT WE PROVIDE. NO RELATED PERSON MAKES ANY WARRANTIES THAT THE SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE; NOR DO ANY OF THEM MAKE ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICES OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THE SERVICES. WE ARE NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM USER OR STORED BY USER OR ANY OF USER'S USERS VIA THE SERVICES PROVIDED BY US NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY ANY RELATED PERSON, WILL CREATE A WARRANTY; NOR MAY YOU RELY ON ANY SUCH INFORMATION OR ADVICE. The terms of this section shall survive any termination of this Agreement.

**19. Limited Warranty.**

- a. NDM Network represents and warrants to User that the Services will be performed (a) in a manner consistent with industry standards reasonably applicable to the performance thereof; (b) at least at the same level of service as provided by NDM Network generally to its other Users for the same services; and (c) in compliance in all material respects with the applicable Service Descriptions. User will be deemed to have accepted such Services unless User notifies NDM Network, in writing, within thirty (30) days after performance of any Services of any breach of the foregoing warranties. User's sole and exclusive remedy, and NDM Network's sole obligation, for breach of the foregoing warranties shall be for NDM Network, at its option, to re-perform the defective Services at no cost to User, or, in the event of interruptions to the Services caused by a breach of the foregoing warranties, issue User a credit in an amount equal to the current monthly service fees pro rated by the number of hours in which the Services have been interrupted. NDM Network may provision the Services from any of its data

centers and may from time to time re-provision the Services from different data centers.

- b. The foregoing warranties shall not apply to performance issues or defects in the Services (a) caused by factors outside of NDM Network's reasonable control; (b) that resulted from any actions or inactions of User or any third parties; or (c) that resulted from User's equipment or any third-party equipment not within the sole control of NDM Network. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND WE HEREBY EXPRESSLY DISCLAIM THE SAME. WITHOUT LIMITING THE FOREGOING, ANY THIRD-PARTY PRODUCT OR SERVICE PROVIDED TO USER HEREUNDER IS PROVIDED "AS IS" WITHOUT ANY CONDITION OR WARRANTY WHATSOEVER. WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.

## **20. Limitation of Liability.**

- a. **IN NO EVENT WILL OUR LIABILITY IN CONNECTION WITH THE SERVICES, ANY SOFTWARE PROVIDED HEREUNDER OR ANY ORDER, WHETHER CAUSED BY FAILURE TO DELIVER, NON-PERFORMANCE, DEFECTS, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE AGGREGATE SERVICE FEES PAID TO US BY YOU DURING THE 3-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.**
  
- b. **WE CANNOT GUARANTEE CONTINUOUS SERVICE, SERVICE AT ANY PARTICULAR TIME, INTEGRITY OF DATA, INFORMATION OR CONTENT STORED OR TRANSMITTED VIA THE INTERNET. WE WILL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ANY CORRUPTION, ERASURE, THEFT, DESTRUCTION, ALTERATION OR INADVERTENT DISCLOSURE OF, DATA, INFORMATION OR CONTENT TRANSMITTED, RECEIVED OR STORED ON ITS SYSTEM.**

- c. **EXCEPT AS EXPRESSLY PROVIDED BELOW, NEITHER PARTY SHALL BE LIABLE IN ANY WAY TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY LOST PROFITS OR REVENUES, LOSS OF USE, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LICENSES OR SERVICES OR SIMILAR ECONOMIC LOSS, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR NOT, UNDER ANY WARRANTY OR OTHER RIGHT HEREUNDER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY ORDER, OR FOR ANY CLAIM AGAINST THE OTHER PARTY BY A THIRD PARTY, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES.**
- d. The limitations contained in this Section apply to all causes of action in the aggregate, whether based in contract, tort or any other Terms of Service theory (including strict liability), other than claims based on fraud or willful misconduct. The limitations contained in Section 15 shall not apply to User's indemnification obligations.
- e. Notwithstanding anything to the contrary in this Agreement, NDM Network's maximum liability under this Agreement for all damages, losses, costs and causes of actions from any and all claims (whether in contract, tort, including negligence, quasi-contract, statutory or otherwise) shall not exceed the actual dollar amount paid by User for the Services which gave rise to such damages, losses and causes of actions during the 3-month period prior to the date the damage or loss occurred or the cause of action arose.
- f. User understands, acknowledges and agrees that if NDM Network takes any corrective action under this Agreement because of an action of User or one of its Users or a reseller, that corrective action may adversely affect other Users of User or other reseller Users, and User agrees that NDM Network shall have no liability to User, any of its Users or any Reseller User due to such corrective action by NDM Network.

- g. This limitation of liability reflects an informed, voluntary allocation between the parties of the risks (known and unknown) that may exist in connection with this Agreement. The terms of this section shall survive any termination of this Agreement.

**21. Indemnification.** User agrees to indemnify, defend and hold harmless NDM Network and its parent, subsidiary and affiliated companies, and each of their respective officers, directors, employees, shareholders, attorneys and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to User's use of the Services, (ii) any violation by User of the AUP, (iii) any breach of any representation, warranty or covenant of User contained in this Agreement or (iv) any acts or omissions of User. The terms of this section shall survive any termination of this Agreement.

## **22. Waiver of Jury Trial**

- a. Both You and NDM Network hereby agree to waive all respective rights to a jury trial of any claim or cause of action related to or arising out of this Agreement.
- b. The scope of the waiver is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter herein, including without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims.
- c. You and NDM Network each acknowledge that the waiver is a material inducement for each party to enter into a business relationship, that each party has already relied on the waiver in entering into this Agreement and that each will continue to rely on the waiver in their related future dealings.
- d. Each party further warrants and represents that each has had the opportunity to have counsel review this Agreement and this waiver.

- e. The waiver is irrevocable, meaning that it may not be modified either orally or in writing, and the waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this Agreement. In the event of litigation, this Agreement may be filed as written consent to a trial by court.

### 23. Miscellaneous.

- a. **Independent Contractor.** NDM Network and User are independent contractors and nothing contained in this Agreement places NDM Network and User in the relationship of principal and agent, master and servant, partners or joint ventures. Neither party has, expressly or by implication, or may represent itself as having, any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.
  
- b. **Governing Law; Jurisdiction.** Any controversy or claim arising out of or relating to this Agreement, the formation of this Agreement or the breach of this Agreement, including any claim based upon arising from an alleged tort, shall be governed by the substantive laws of the State of Massachusetts. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any suit, action or proceeding concerning this agreement must be brought in a state or federal court located in Maricopa, Massachusetts. **EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS THEREFROM) IN ANY SUCH SUIT, ACTION OR PROCEEDING AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT ANY SUCH SUIT, ACTION OR PROCEEDING WHICH IS BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**
  
- c. **Headings.** The headings herein are for convenience only and are not part of this Agreement.
  
- d. **Entire Agreement; Amendments.** This Agreement, including documents incorporated herein by reference, supersedes all prior discussions, negotiations and agreements between the parties with respect to the subject matter hereof, and

this Agreement constitutes the sole and entire agreement between the parties with respect to the matters covered hereby. In case of a conflict between this Agreement and any purchase order, service order, work order, confirmation, correspondence or other communication of User or NDM Network, the terms and conditions of this Agreement shall control. No additional terms or conditions relating to the subject matter of this Agreement shall be effective unless approved in writing by any authorized representative of User and NDM Network. This Agreement may not be modified or amended except by another agreement in writing executed by the parties hereto; provided, however, that these Terms of Service may be modified from time to time by NDM Network in its sole discretion, which modifications will be effective upon posting to NDM Network's Web site.

- e. **Severability.** All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.
  
- f. **Notices.** All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers set forth below the parties' signatures. Either party may change its address or facsimile number for purposes of this Agreement by notice in writing to the other party as provided herein. NDM Network may give written notice to User via electronic mail to the User's electronic mail address as maintained in NDM Network's billing records.
  
- g. **Waiver.** No failure or delay by any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this

Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

- h. **Assignment; Successors.** User may not assign or transfer this Agreement or any of its rights or obligations hereunder, without the prior written consent of NDM Network. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever. NDM Network may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without the consent of User. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- i. **Limitation of Actions.** No action, regardless of form, arising by reason of or in connection with this Agreement may be brought by either party more than two years after the cause of action has arisen.
- j. **Counterparts.** If this Agreement is signed manually, it may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If this Agreement is signed electronically, NDM Network's records of such execution shall be presumed accurate unless proven otherwise.
- k. **Force Majeure.** Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.
- l. **No Third-Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended, nor shall anything herein be construed to confer any rights, Terms of Service or equitable, in any Person other than the parties hereto and their respective successors and permitted assigns.

Notwithstanding the foregoing, User acknowledges and agrees that any supplier of third-party product or service that is identified as a third-party beneficiary in the Service Description, is an intended third-party beneficiary of the provisions set forth in this Agreement as they relate specifically to its products or services and shall have the right to enforce directly the terms and conditions of this Agreement with respect to its products or services against User as if it were a party to this Agreement.

- m. **Government Regulations.** User may not export, re-export, transfer or make available, whether directly or indirectly, any regulated item or information to anyone outside the United States in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the United States government and any country or organization of nations within whose jurisdiction User operates or does business.
  
- n. **Marketing.** User agrees that during the term of this Agreement NDM Network may publicly refer to User, orally and in writing, as a User of NDM Network. Any other public reference to User by NDM Network requires the written consent of User.

#### Acceptable Use Policy

We've developed this Acceptable Use Policy (AUP) to help our Customers understand their responsibilities when using our services. It explains our policies regarding activities that may be harmful to our Users or compromise the efficiency of our shared hosting environment.

We may take preventative or corrective action, at our discretion, in response to any of the activities described in this AUP, along with any activities that contradict the spirit of this AUP or the nature of the Internet as an open, efficient method of communicating and conducting business.

To meet the changing needs of our Users, our business, the Internet environment and the legal landscape, this AUP may be revised at any time and we encourage you to review this AUP on our Web site(s) periodically.

If you feel you have discovered a violation of any area of our AUP, please report it to:

NDM Network  
Legal Department  
70 Blanchard Road  
3rd Floor  
Burlington, MA 01803

Fax: (781) 998-8277  
E-mail: abuse@NDM Network-inc.com

- 1. General Information.** As used herein, the term "User" or "Users" shall include any and all users, Customers, subscribers, affiliates (including without limitations Customers or non-Customers to whom NDM Network provides links or banners to promote the services or products of NDM Network or any third party the services or products of which are offered by or obtained through or in connection with NDM Network), resellers or others (i) who sign up for, use or obtain services or products from NDM Network or from any third party services or products of which are offered by or obtained through or in connection with NDM Network, or (ii) who visit the Web site of NDM Network or of any such third party. As a provider of Internet/World Wide Web access, Web site hosting, and other Internet-related services, NDM Network, ("NDM Network") offers Users, the means to acquire and disseminate a wealth of public, private, commercial, and non-commercial information. NDM Network respects that the Internet provides a forum for free and open discussion and dissemination of information, however, when there are competing interests at issue, NDM Network reserves the right to take certain preventative or corrective actions. In order to protect these competing interests, NDM Network has developed this Acceptable Use Policy ("AUP"), which supplements and explains certain terms of each User's respective service agreement and is intended as a guide to the User's rights and obligations when utilizing NDM Network's services. This AUP will be revised from time to time. A User's use of NDM Network's services after changes to the AUP are posted on NDM Network's Web site, under the Terms of Service section, will constitute the User's acceptance of any new or additional terms of the AUP that result from those changes. One important aspect of the Internet is that no one party owns or controls it. This fact accounts for much of the Internet's openness and value, but it also places a high premium on the judgment and responsibility of those who use the Internet, both in the information they acquire and in the information they disseminate to others. When Users or others obtain information through the Internet, they must keep in mind that NDM Network cannot and does not monitor, verify, warrant, or vouch for the accuracy and quality of the information that users may acquire. For this reason, the user must exercise his or her best judgment in relying on information obtained from the Internet, and also should be aware that some material posted to the Internet is sexually explicit or otherwise offensive. Because NDM Network cannot monitor or censor the Internet, and will not attempt to do so, NDM Network cannot and does not accept any responsibility for injury to its Users or others that results from inaccurate, unsuitable, offensive, or illegal Internet communications. When Users or others disseminate information through the Internet, they also must keep in mind that NDM Network does not review, edit, censor, or take responsibility for any information its users, customers, subscribers or others may create. When Users or others place information on the Internet, they have the same liability as other authors for copyright infringement, defamation, and other harmful speech. Also, because the information they create is carried over NDM Network's network and may reach a large number of people, including both Users and subscribers and non-subscribers of NDM Network, Users' postings to the Internet may affect others and may harm NDM Network's goodwill, business reputation, and operations. For these reasons, Users violate

NDM Network policy and the service agreement when they, their users, customers, subscribers, employees, affiliates, or subsidiaries engage in activities described herein.

2. **Scope.** This AUP governs the usage of products and services of NDM Network or of any third party which are subscribed to or obtained through NDM Network (the "Services"). This AUP is incorporated by reference into each contract NDM Network or any such third party enters into with a User for the use of such Services. NDM Network may modify this AUP at any time without notice. In addition, this AUP is incorporated by reference into the Terms of Service applicable to the Web site of NDM Network so that no person who utilizes the Web site or services of NDM Network (regardless of whether that person is a User) may take any action utilizing the Web site of NDM Network that a User would be prohibited to take utilizing the Services.
  
3. **Purpose.** The purpose of this AUP is to enhance the quality of the Services and to protect Users, and the Internet community as a whole, from illegal, irresponsible, or disruptive Internet activities. This AUP applies to each User. Each User should use common sense and good judgment in connection with the Services. Parents or guardians should always supervise minors in using the Internet. Parents and guardians should remain aware at all times of what is on the Internet and how the minors under their care are using the Services and the Internet.
  
4. **Prohibited Uses.** Users may not:
  - a. Utilize the Services to send unsolicited bulk and/or commercial messages over the Internet (known as "spam" or "spamming"). It is not only harmful because of its negative impact on consumer attitudes toward NDM Network, but also because it can overload NDM Network's network and disrupt service to its Users subscribers. Maintaining an open SMTP relay is prohibited. Any direct action, configuration, or setting that causes excessive outbound e-mail traffic is subject to review and possible action. When a complaint is received, NDM Network has the absolute and sole discretion to determine from all of the evidence whether the e-mail recipients were from an "opt-in" e-mail list, or whether the outbound e-mail traffic generated from an account is suitable for a shared hosting environment.
  
  - b. Utilize the Services in connection with any illegal activity or activity otherwise prohibited by this AUP. Without limiting the general application of this rule, Users may not:

- i. Utilize the Services for or in connection with any activities or content determined by NDM Network, in its sole discretion, to be related to gambling, adult, obscene or pornographic materials or content, harassment, defamation, libel and hate speech or other offensive speech or content, or for any unlawful purpose, including without limitation, fraud, money laundering, child pornography, terrorist-related activities, activities in violation of U.S. export or import laws, any executive orders, or any rules, regulations or orders issued by Office of Foreign Asset Controls ("OFAC"), infringement on rights of others, trafficking in illegal drugs, or any products or services that are prohibited under applicable law, or which NDM Network determines to be controversial or disruptive to the operations of NDM Network or any other User or third party;
  - ii. Utilize the Services to copy material from third parties (including text, graphics, music, videos or other copyrightable material) without proper authorization;
  - iii. Utilize the Services to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party;
  - iv. Utilize the Services to export encryption software to points outside the United States in violation of applicable export control laws;
  - v. Utilize the Services to Forge or misrepresent message headers, whether in whole or in part, to mask the originator of the message; or
  - vi. Utilize the Services in any manner that violates applicable law.
- c. Utilize the Services in connection with any tortious or actionable activity. Without limiting the general application of this rule, Users and Users may not:

- i. Utilize the Services to publish or disseminate information that (A) constitutes slander, libel or defamation, (B) publicizes the personal information or likeness of a person without that person's consent or (C) otherwise violates the privacy rights of any person. Utilize the Services to threaten persons with bodily harm, to make harassing or abusive statements or messages, or to solicit the performance of acts or services that are illegal under applicable law.
  
- ii. Utilize the Services in connection with any other disruptive, controversial or abusive activity, as determined by NDM Network in its sole discretion. Without limiting the general application of this rule, Users may not:
  - a. Utilize the Services to cause denial of service attacks against NDM Network or other network hosts or Internet users or to otherwise degrade or impair the operation of NDM Network's servers and facilities or the servers and facilities of other network hosts or Internet users; or
  
  - b. Post messages or software programs that consume excessive CPU time, or storage space, or network bandwidth; or
  
  - c. Utilize the Services to offer mail services, mail forwarding capabilities, POP accounts or auto responders other than for the User's own account; or
  
  - d. Utilize the Services to resell access to CGI scripts installed on NDM Network's servers; or
  
  - e. Utilize the Services to subvert, or assist others in subverting, the security or integrity of any NDM Network systems, facilities or equipment; or
  
  - f. Utilize the Services to gain unauthorized access to the computer networks of NDM Network or any other person; or

- g. Utilize the Services to provide passwords or access codes to persons not authorized to receive such materials by the operator of the system requiring the password or access code; or
- h. Utilize the Services to (A) forge the signature or other identifying mark or code of any other person, (B) impersonate or assume the identity of any other person, or (C) engage in any other activity (including "spoofing") to attempt to deceive or mislead other persons regarding the true identity of the User (excluding the use of anonymous re-mailers or Internet nicknames); or
- i. Utilize the Services to distribute or post any virus, worm, Trojan horse, or computer code intended to disrupt services, destroy data, destroy or damage equipment, or disrupt the operation of the Services; or
- j. Utilize the Services to conduct port scans or other invasive procedures against any server (except any server for which the User is an authorized system administrator); or
- k. Utilize the Services to distribute, advertise or promote software or services that have the primary purpose of encouraging or facilitating unsolicited commercial e-mail or Spam; or
- l. Utilize the Services to solicit or collect, or distribute, advertise or promote, e-mail address lists for the purpose of encouraging or facilitating unsolicited commercial e-mail or Spam; or
- m. Utilize the Services in any manner that might subject NDM Network to unfavorable regulatory, law enforcement or other legal action, subject NDM Network to any liability for any reason, or adversely affect NDM Network's public image, reputation or

goodwill, including, without limitation, sending or distributing sexually explicit, hateful, vulgar, racially, ethnically or otherwise objectionable materials as determined by NDM Network in its sole discretion;

- n. While on a shared hosting platform, utilize, operate, enable, execute, compile, upload or publicly store source code, executable code, programs, or software packages designed to perform tasks not directly associated with Web site/e-mail hosting, including, without limitation, (A) directly opening any listening port, (B) starting any 'daemon' process, (C) performing local/remote security scans, (D) simulating local shell/OS access by means of a tunneled/encapsulated connection to a remote host, (E) circumventing firewall restrictions, (F) connecting to any IRC/Peer to Peer file sharing server/network, (G) providing 'tracker' services to 'Bit Torrent' clients and/or (H) exploiting web browser vulnerabilities, as determined by NDM Network in its sole discretion; or
  
- o. Attempt to attack, disrupt, or abuse the support- and contact-related mechanisms of NDM Network, including, but not limited to, telephone lines, e-mail addresses, fax lines, bulletin boards or contact/signup forms; or
  
- p. Utilize the Services in any other manner to interrupt or interfere with the Internet usage of other persons.

## **5. Violations:**

- a. Disclaimer. NDM Network expressly disclaims any obligation to and does not monitor its Users and other Users with respect to violations of this AUP. NDM

Network has no liability or responsibility for the actions of any of its Users or other Users or any content any User may post on any Web site.

- b. Reporting Non-Copyright Violations. NDM Network encourages Users to report violations of this policy by e-mail to: [abuse@ndmnetwork.com](mailto:abuse@ndmnetwork.com), including in any such report the name of the offending domain (for example, xyz.com) and the type of abuse (for example, Spam, illegal acts, harassment, etc.) in the "subject" field of the e-mail.
  
- c. Reporting Copyright Violations. NDM Network complies with the [Digital Millennium Copyright Act \("DMCA"\)](#). NDM Network encourages Users to report an alleged copyright infringement involving a user by sending a notice that complies with the DMCA which information is located under the DMCA Policy of this Web site.
  
- d. Remedies. If NDM Network learns of a violation of this AUP, NDM Network will respond to the applicable User and may, in NDM Network's sole discretion, take any or all of the following actions, with or without notice as it deems necessary or appropriate in accordance with the severity and duration of the violation:
  - i. Warning the User; and/or
  
  - ii. Suspending the offending User from the Services; and/or Terminating or cancelling, or disconnecting the offending User from, the Services; and/or
  
  - iii. Imposing fees or charges on the offending User account in accordance with the applicable service contract; and/or
  
  - iv. Removing the offending content; and/or

- v. Taking other action in accordance with this AUP, the applicable service contract or applicable law.

6. **Reservation of Rights.** NDM Network reserves the right to cooperate with and provide any and all User information and data to appropriate legal authorities in investigations or reporting of claims of illegal activity involving NDM Network's Services. NDM Network reserves all other rights to respond to violations of this AUP to the extent of applicable law and in accordance with any applicable contractual obligations. NDM Network may utilize technical means to monitor communications into, and out of, its network facilities to prevent the introduction of viruses or other hostile code, to prevent intrusions and otherwise to enforce this AUP and each User agrees that NDM Network is authorized to monitor its communications through NDM Network's network for such purposes.