

## Contract for Website Design and Hosting Services

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The following agreement is between Techtrade Internet Services, (hereforth known as "*TIS*"), of 362 North First Street, Hampton, VA 23664 and you (hereforth know as "*Client*").

WHEREAS, *TIS* is an Internet Services provider offering (1) web site design services and (2) hosting services over the Internet through Internet Presence Providers (*IPP*);

WHEREAS, *Client* seeks to utilize *TIS* for its own purposes;

WHEREAS, the parties acknowledge that the Internet is neither owned nor controlled by any one entity; therefore, *TIS* can make no guarantee that any given person on-line shall be able to access anyone of *TIS*'s provided web servers at any given time. *TIS* represents that it shall make every good faith effort to ensure that the *IPP* equipment is available as widely as possible and with as little service interruption as possible;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

### I. Age:

The *Client* certifies that he or she is at least 18 years of age. If the client is not at least 18 years of age, then he/she has been granted the permission by his/her legal guardian to act on that guardian's behalf. Under these circumstances, the underage client has been granted permission to use *TIS*'s services and enter into this agreement on behalf of the legal guardian.

### II. Financial Arrangements:

- *Client* agrees to a minimum three (3) month contract, beginning upon *TIS*'s receipt by fax, postal mail or electronic mail of *client*'s order.
- If the *Client* chooses a three (3) month plan, then three months of hosting service at \$28.95 per month, plus a one-time setup fee of \$35.00 is due upon initial order; this 3 month fee totals \$121.85.
- This agreement will automatically renew every 3 months unless canceled in writing at least 15 days prior to the renewal date. Renewal of services by *Client* indicates agreement to Contract revisions.

### III. Taxes:

*TIS* shall not be liable for any taxes or other fees to be paid in accordance with or related to purchases made from *Client* or *TIS*'s equipment. *Client* agrees to take full responsibility for all taxes and fees of any nature associated with such products sold.

### III. Material and Products:

*Client* will provide *TIS* with material and data in a condition that is "server-ready", which is in a form requiring no additional manipulation on the part of *TIS*. *TIS* shall make no effort to validate this information for content, correctness or usability.

### IV. Competency

Use of *TIS*'s service requires a certain level of knowledge in the use Internet languages, protocols, and software. This level of knowledge varies depending on the anticipated use and desired content of Client's Web space by the Client.

The following examples are offered:

Web Publishing: requires a knowledge of HTML, properly locating and linking documents, FTPing documents, creating graphics, text, sound, image mapping, etc.

CGI-Scripts: requires a knowledge of the UNIX environment, TAR & GUNZIP commands, Perl, C Shell scripts, permissions, etc.

E-mail: a knowledge of POP3 service, mail forwarding, use of mail clients to receive mail, etc.

The Client agrees that he or she has necessary knowledge to create, utilize *TIS*'s service without dependence on *TIS*. Client agrees that it is not the responsibility of *TIS* to provide this knowledge or Customer Support outside of the defined service of *TIS*.

## V. Content

1. *TIS* will exercise no control whatsoever over the content of the information passing through the network. *TIS* makes no warranties or representations of any kind, whether expressed or implied for the service it is providing. *TIS* also disclaims any warranty of merchantability or fitness for particular purpose and will not be responsible for any damages that may be suffered by the Client, including loss of data resulting from delays, non-deliveries or service interruptions by any cause or errors or omissions of the Client. Use of any information obtained by way of *TIS* is at the Client's own risk and *TIS* specifically denies any responsibility for the accuracy or quality of information obtained through its services. Connection speed represents the speed of a connection to and does not represent guarantees of available end to end bandwidth. *TIS* expressly limit its damages to the Client for any non-accessibility time or other down time to the prorata monthly charge during the system unavailability. *TIS* specifically denies any responsibilities for any damages arising as a consequence of such unavailability.

2. In the event that any particular clients' material is not "Server-ready", *TIS* may, at its option and at any time, reject this material, including but not limited to after it has been put on *TIS*'s IPP webservers. This includes *TIS*'s right to disable such non-"Server-ready" materials, such as CGI scripts or programs which consume an unreasonable amount of CPU (Central Processing Unit) usage or RAM (Random Access Memory) as determined by *TIS*. *TIS* may also at its discretion at any time, suspend access to any client's website without notice, due to over-consumption of bandwidth (exceeding 17,000MB/day transfer), CPU usage, or any other reason which might effect the performance of *TIS*'s IPP services. *TIS* agrees to notify Client immediately of its refusal of the material and/or suspension of the account and afford Client the opportunity to amend or modify the material to satisfy the needs and/or requirements of *TIS*. If the Client fails to modify the material, as directed by *TIS*, within a reasonable period of time, which shall be determined between the parties themselves, the Agreement shall be deemed to be terminated.

## VI. Acceptable Uses

Client is expected to use the Internet with respect, courtesy, and responsibility, giving due regard to the rights of other Internet users. Client is expected to use his/her account for the purposes of maintaining a website only. Common sense is the best guide as to what is considered acceptable use. The following are unacceptable uses:

### 1. Adult Material Restrictions

*TIS* forbids websites with adult graphic content (softcore and/or hardcore), including, but not limited to, banners advertising any adult website(s), child pornography, distribution of adult website passwords, or any website containing graphics of men's and/or women's genitalia and/or breasts. Client's whose accounts are found in violation of this policy may, at the discretion of *TIS*, have their account(s) terminated without notice and are subject to a maximum \$250 clean-up/disconnection fee.

2. Hate Material Restrictions

Hatred messages including racism, sexism, or content promoting one particular race, sex, or nationality as superior and/or another race, sex, or nationality as inferior is unacceptable. Client's whose accounts are found in violation of this policy may, at the discretion of *TIS*, have their account(s) terminated without notice and are subject to a maximum \$250 clean-up/disconnection fee.

3. Illegal Activity Restrictions

Client's whose website promotes activities that violate federal, state, local laws and/or violation of U.S. export restrictions are also not welcome at *TIS*. This includes "warez" sites (freely distributing copyright programs), or sites promoting hacking and/or cracking programs. Client's whose accounts are found in violation of this policy may, at the discretion of *TIS*, have their account(s) terminated without notice and are subject to a maximum \$250 clean-up/disconnection fee. Additionally, *TIS* may contact the Software Piracy Association ("SPA") and release any information in connection with any illegal activities relating to software piracy on the Client's account.

4. Spamming/Mailbombing/Trolling Restrictions

Spamming is the sending of unsolicited e-mail, regardless of size or volume, to persons the sender does not know or have prior consent to send the message. Using fictitious e-mail addresses @*TIS* is strictly forbidden. Spamming also includes sending unsolicited advertisements to numerous email addresses or newsgroups and/or generating a significantly higher volume of outgoing email than a normal user. Trolling, the posting of outrageous messages to generate numerous responses is also not allowed. Mailbombing, the sending of multiple messages without significant new content to the same user and/or subscribing someone else to a mailing list without that person's permission, cross-posting articles to an excessive number of newsgroups, or attempting without authorization to enter into a secured computer system is strictly forbidden. *TIS* reserves the right to determine what constitutes abuse of this policy. Client's whose accounts are found in violation of this policy may, at the discretion of *TIS*, have their account(s) terminated without notice and are subject to a maximum \$500 clean-up/disconnection fee.

5. IRC Bots Restrictions

IRC Bots, or any other automated programs written in C, Perl or IRC-script used specifically in conjunction with IRC are not welcome. These programs tie up system resources and are in no way related to maintaining a website. Client's are not allowed to have any programs, including but not limited to, Eggdrop, BitchX, or any other IRC-related programs within their account. Client agrees not to upload the tar file for any of these programs or to execute them within their account. The first violation of this policy will result in the IRC-related program to be removed from the Client's account and *TIS* will notify the Client immediately of the violation. The second violation of this policy may, at the discretion of *TIS*, result in the Client's account(s) terminated without notice and a maximum \$100 clean-up/disconnection fee.

6. Audio & Video Restrictions

Client agrees that all audio and video content contained within his/her account is free from any and all copyright protection. MP3 files (MPEG 1 Layer-3) encoded from copyright material, such as popular CD's are prohibited. This policy holds with Real Audio/Video content. Client agrees not to upload any audio/video files, regardless of file type (.ra, .mp3, .wav, .au) which violate another entity's copyright. The first violation of this policy will result in the copyright material being removed from the Client's account and *TIS* will notify the Client immediately of the violation. The second violation of this

policy may, at the discretion of *TIS*, result in the Client's account(s) terminated without notice and a maximum \$100 clean-up/disconnection fee.

#### 7. Emulator/ROM Restrictions

Client agrees not to store Game-emulators or ROMs within their account. These emulators/ROMS commonly violate copyright law and therefore are not allowed at *TIS*. Any emulator(s), or programs that will allow you to play certain ROMs for a specific game console or computer or ROM(s), (read only memory) game cartridges in binary format are prohibited. If these programs are found within the Client's account, it may, at the discretion of *TIS*, result in the Client's account(s) terminated without notice and a maximum \$100 clean-up/disconnection fee.

#### 8. Excessive CPU/RAM Usage

Client agrees to take all responsibility for all programs including CGI scripts executed under their account. Programs that consume an excessive amount of CPU run time or Random Access Memory. Client agrees and understands that he/she shares the a particular webserver with other clients and agrees to honor this clause. Client agrees to accept responsibility for programs executed under his/her account, regardless of who authored the program. *TIS* reserves the right to suspend accounts without notice to clients who violate these terms. *TIS* has sole discretion over what constitutes excessive usage.

### VII. Software End-User License Agreement

This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and *TIS* for Internet-related services, which includes proprietary software ("SOFTWARE PRODUCT"). The SOFTWARE PRODUCT also includes any updates and supplements to the original SOFTWARE PRODUCT provided to you by *TIS*. Any software provided along with any Internet-related service that is associated with a separate end-user license agreement is licensed to you under the terms of that license agreement. By accessing, downloading, and/or using the SOFTWARE PRODUCT, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, then you are prohibited from opening an account with *TIS*.

The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold. This SOFTWARE PRODUCT pertains to, but is not limited to, The Personal Control Panel.

#### 1. Grant of Licensee.

This EULA grants you the following rights:

\* Access:

You may access the SOFTWARE PRODUCT via the World Wide Web only (not Telnet or File Transfer Protocol) at anytime using a standard Internet browser including, but not limited to, Netscape Navigator and/or Microsoft Internet Explorer.

\* Usage:

You may also use the SOFTWARE PRODUCT for its intended use on your account only. This includes setting up features, editing files, and configuring e-mail options.

#### 2. Description of Other Rights and Limitations

\* Limitations on Reverse Engineering, Copying, and Disassembly:

You may not reverse engineer, copy, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Any attempt by the end-user to reverse engineer, copy, or disassemble the SOFTWARE

PRODUCT regardless of intent will result in immediate termination of his/her account without notification and possible legal action at the discretion of *TIS*.

\* Separation of Components.

The SOFTWARE PRODUCT is licensed as a single product and its component parts may not be separated.

\* Trademarks.

This EULA does not grant you any rights in connection with any trademarks or service marks of *TIS*.

\* Termination.

Without prejudice to any other rights, *TIS* may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, *TIS* can terminate your account without notice.

### 3. Copyright

All title and intellectual property rights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, CGI scripts, C programs, Tcl scripts, HTML code, text, JavaScript (including VBScript), and "applets" incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT are owned wholly by *TIS's IPP*. All title and intellectual property rights in and to the content which may be accessed through use of the SOFTWARE PRODUCT is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants you no rights to use such content. All rights not expressly granted are reserved by *TIS's IPP*.

### 4. U.S. Government Restricted Rights

The SOFTWARE PRODUCT and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software--Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is *TIS Incorporated/2131 NE River Ridge Road/St. Joseph, MO 64507-8756*.

#### Limited Warranty

*TIS's IPP* warrants that (a) the SOFTWARE PRODUCT will perform substantially in accordance with the accompanying written materials for a period of twenty (20) days from the date the end-user opens his/her account, and (b) any Support Services provided by *TIS* shall be substantially as described in applicable materials provided to you by *TIS* via the *TIS* Support Website, and the *TIS* technical support staff will make commercially reasonable efforts to solve any problem. To the extent allowed by applicable law, implied warranties on the SOFTWARE PRODUCT, if any, are limited to ninety (90) days. Some states/jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you.

#### Client Remedies

*TIS'* and *IPP* entire liability and your exclusive remedy shall be, at *TIS's* option, either (a) return of the initial price paid less setup fees, if any, or (b) repair or replacement of the SOFTWARE PRODUCT that does not meet *TIS's* Limited Warranty. This Limited Warranty is void if failure of the SOFTWARE PRODUCT has resulted from accident, abuse, or misapplication. Any replacement SOFTWARE PRODUCT will be warranted for the remainder of the original warranty period or thirty (10) days, whichever is longer.

#### No Other Warranties

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, *TIS* AND ITS IPP DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL *TIS* OR ITS IPP BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE PRODUCT OR THE FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF *TIS* HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, MICROSOFT'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS EULA SHALL BE LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE PRODUCT OR U.S. \$5.00. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

VIII. Trademarks & Copyrights:

Client warrants that it has the right to use the applicable trademarks, if any, and grants *TIS* the right to use such trademarks in connection with *TIS*'s service. This includes the right granted by Client to *TIS* to advertise the Client in conjunction with *TIS*'s service.

IX. Hardware, Equipment & Software:

The customer is responsible for and must provide all telephone, computer, hardware and software equipment and services necessary to access *TIS*. This equipment includes a personal computer equipped with a 2400 baud modem or faster, Internet access via an ISP ("Internet Service Provider"). *TIS* makes no representations, warranties or assurances that the Customer's equipment will be compatible with the *TIS* service. Client understands that *TIS* is not an ISP and therefore will not provide dial-up Internet access for the Client.

X. Internet Etiquette:

Electronic forums such as mail distribution lists and UseNet news groups all have expectations regarding subject area and appropriate etiquette for posting. Users of these forums should be considerate of the expectations and sensitivities of others on the network when posting material for electronic distribution. The network resources of WWM may not be used to impersonate another person or misrepresent authorization to act on behalf of others or *TIS*. All messages transmitted via *TIS* should correctly identify the sender; users may not alter the attribution of origin in electronic mail messages or posting. Users must not attempt to undermine the security or integrity of computing systems or networks and must not attempt to gain unauthorized access.

XI. Service Guarantee

*TIS* will extend a 30 day conditional money-back guarantee to Client. This service guarantee shall begin upon the setup of Client's account and shall expire thirty days later. Client has the right to cancel his/her contract with *TIS* by providing written notice to *TIS* stating the Client's intent to cancel within their 30 day period. The written cancellation notice shall entitle the Client to a refund of any moneys paid less any setup fees incurred.

#### 1. Service Related

Client must cancel his/her account with *TIS* due to interruption in service only. This includes "downtime", power outages resulting in the inability of *TIS* to provide the service promised, or errors within the software provided and verified by *TIS*.

#### 2. Limitations

Client is not entitled to any sort of refund due to ignorance of *TIS*'s underlying service or payment policies. This includes, but is not limited to, cancellation because of a three month minimum payment upfront, *TIS* not providing dial-up Internet access, problems registering or transferring any domain, U.S. top-level or foreign, getting programs (CGI scripts) or features (search engines, guestbooks, etc.) working on the Client's account. Client may not be entitled to any sort of refund because he/she had violated any one of the seven restrictions outlined in the acceptable uses policy above, even if the Client provided written notice within 30 days for a service-related reason. Client will not be entitled to a refund for cancellation due to the fact that he/she did not read our acceptable uses and later learned that his/her content violates our acceptable uses. Acts of God, including but not limited to, earthquakes, thunderstorms, or fires which result in an interruption in service are exempt from the service guarantee. Because these circumstances are beyond the control of *TIS*, the service guarantee will be void under these conditions. However, *TIS* will make every good faith effort to reinstate service to Client as quickly as possible.

#### XII. Termination:

This Agreement may be terminated by either party, without cause, by giving the other party 30 days written notice. Notwithstanding the above, *TIS* may terminate service under this Agreement at any time, without penalty, and collect any termination fees as outlined above if the Client fails to comply with the terms of this Agreement.

#### XIII. Limited Liability:

1. Client expressly agrees that use of *TIS*'s equipment is at Client's sole risk. Neither *TIS*, its employees, affiliates, agents, third party information providers, resellers or the like, warrant that *TIS*'s service will not be interrupted or error free; nor do they make any warranty as to the results that may be obtained from the use of the service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through *TIS*, unless otherwise expressly stated in this Agreement.

2. Under no circumstances, including negligence, shall *TIS*, its IPP, its offices, agents or any one else involved in creating, producing or distributing *TIS*'s service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use of *TIS*'s service; or that results from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission or any failure of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorized access to *TIS*'s records, programs or services. Client hereby acknowledges that this paragraph shall apply to all content on *TIS*'s Server service.

3. Notwithstanding the above, Client's exclusive remedies for all damages, losses and causes of actions whether in contract, tort including negligence or otherwise, shall not exceed the aggregate dollar amount which Client paid during the term of this Agreement and any reasonable attorney's fee and court costs.

XIV. Indemnification:

Client agrees that it shall defend, indemnify, save and hold *TIS* and its IPP harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorneys' fees, ("Liabilities") asserted against *TIS*, its IPP, its agents, its customers, resellers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by Client, its agents, employees or assigns. Client agrees to defend, indemnify and hold harmless *TIS* against Liabilities arising out of (i) any injury to person or property caused by any products sold or otherwise distributed in connection with *TIS*'s IPP equipment; (ii) any material supplied by Client infringing or allegedly infringing on the proprietary rights of a third party; (iii) copyright infringement and (iv) any defective product which Client sold using *TIS*'s IPP service.

XVI. Contract Revisions:

Revisions to this Contract will be applicable to previous Contracts. Revisions will be considered agreed to by the Client on renewal of *TIS* service as specified in Section I, Financial Arrangements.

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This Agreement constitutes the entire understanding of the parties. Any changes or modifications to this Contract thereto are agreed to by both parties upon renewal of services.

This Agreement shall be governed and construed in accordance with the laws of the State of Virginia and of the Internet.

By placing an order for *TIS*'s services, both parties agree to the terms of this contract as outlined above.