

OnSmart Network Hosting Agreement

This Agreement sets forth the Standard Terms and Conditions that apply to the use of the OnSmart Network, Inc.'s ("OnSmart Network") hosting services.

YOUR USE OF THE ONSMART NETWORK HOSTING SERVICES INDICATES YOUR AGREEMENT TO BE BOUND BY THESE TERMS OF SERVICE.

Terms and Conditions

You agree to familiarize yourself with these terms, and abide by them if you choose to use the services to which such terms apply.

User Conduct

You agree to abide by all applicable local, state, national and international laws and regulations regarding your use of our service.

User Eligibility

You represent and warrant that you, as the person legally responsible for all use of this account, are at least 18 years of age. If you are under 18 years of age, you must have parental consent in order to sign up, and the account must be ordered by a parent or legal guardian, in their own name. You agree to supply OnSmart Network with a current and truthful name, postal address and telephone number for our records, and you have a continued obligation to keep this information current. You also agree that you are an authorized user of any credit card that you supply to us, and you understand and agree that we have an obligation to fully investigate any possible fraudulent credit card use.

Contents of Messages

You are solely responsible for the contents of your messages and your website and the consequences thereof. You agree not to do anything which would restrict or inhibit any other user from using and enjoying the Internet. You further agree not to use OnSmart Network to send any messages or material that are unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise constitute a criminal offense, give rise to civil liability or otherwise objectionable material of any kind or nature or that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation. OnSmart Network reserves the right to terminate your account if

OnSmart Network becomes aware and determines, in its sole discretion, that you are violating any of the foregoing guidelines.

Unlawful of Prohibited Use

As a condition of your use of the OnSmart Network Hosting Service you warrant to OnSmart Network that you will not use the OnSmart Network Hosting Service for any unlawful purpose. Transmission, distribution, or storage of any information, data or material in violation of United States or state regulation or law, or by common law, is prohibited. This includes, but is not limited to, material protected by copyright, trademark, trade secret, or any other statute. OnSmart Network reserves the right to remove such illegal material from the OnSmart Network servers immediately.

Terms of Payment

You agree to pay OnSmart Network appropriate payment for the services received from OnSmart Network, in advance of the time period during which such services are provided. Payment may be made by check, credit card, money order or wire transfer, however OnSmart Network requires users to return a Credit Card Authorization Form for any payment cost over two hundred (\$200) dollars. OnSmart Network accepts American Express, Discover Card, MasterCard and Visa. If you pay by credit card, you agree to provide OnSmart Network with current billing and contact information and authorize OnSmart Network to bill all account and related charges to the credit card on file. You further agree that until and unless you notify OnSmart Network of your desire to cancel any or all services received, those services will be billed on a recurring basis. You agree that prepayments will be billed and charged automatically, that OnSmart Network may apply the amount due to the provided card at any time, and will issue absolutely no refunds. If your credit card is denied for any reason on the first attempt, we will automatically attempt to resubmit such a card within ten business days of the original attempt. Should the card be denied again, we may terminate the account. All files within the account may be deleted on termination. You may notify us in advance not to bill your card, and to provide for alternative billing arrangements.

Users will have fifteen (15) days of due period to make payment. After fifteen (15) days of due period, OnSmart Network will charge an additional twenty-five (\$25) dollars. After forty-five (45) days of due period, OnSmart Network will terminate or delete your account.

No receipts or invoices will be sent by regular mail.

All accounts are setup and billed on an anniversary basis.

OnSmart Network reserves the right to change prices at any time.

All payments are to be made in U.S. currency.

Fees

OnSmart Network will charge a twenty five (\$25.00) dollar processing fee on all returned checks, a twenty five (\$25.00) dollar processing fee on all wire payments and a fifty (\$50.00) dollar processing fee for each individual chargeback. OnSmart Network will immediately suspend your account upon receipt of a chargeback. OnSmart Network will charge a five (\$5.00) dollar credit card resubmission fee if a credit card is declined more than twice within any given year.

Web Site Content

Full back-ups are made weekly, and back-ups of new/changed data are made nightly. No guarantees are made of any kind, either expressed or implied, as to the integrity of these back-ups. Back-ups are made for server restoration purposes only. You are responsible for keeping a copy of your most current web site files as backup on a remote system. OnSmart Network is not responsible for any lost files, information, or data. However, if any loss of data occurs due to an error of OnSmart Network, OnSmart Network will use reasonable efforts to recover the data at no charge to you. If data loss occurs due to your negligence in securing an account or due to an action on your part, OnSmart Network will use reasonable efforts to recover the data from the most recent archive for a fifty (\$50.00) dollar fee.

User Responsibilities

You may not initiate sites that provide any of the following of the following content or links on the OnSmart Network servers:

- Pirated Software (Warez) or any software that is copyrighted and not freely available for distribution without cost.
- Hacking, phreaking, viruses, anarchy, etc.
- IRC Bots, Spamware.
- Archives (music, video and program archives)
- Sexually explicit, obscene or pornographic content (whether in text or graphics)
- Speech or images that are offensive, profane, hateful, threatening, harmful, defamatory, libelous, harassing, discriminatory (whether based on race, ethnicity, creed, religion, gender, sexual orientation, physical disability or otherwise) or that promote any illegal activity.
- Graphic violence.

You agree not to interfere with the operation of the system. You further agree not to interfere with the proper operation of other systems reachable through the Internet, including any attempt at unauthorized access. You agree to adhere to system policies as published by OnSmart Network, including restrictions on services available with each service type, restrictions on certain features, and all other policies. You agree to abide by any and all future OnSmart Network policy decisions. OnSmart Network reserves the right to terminate any account that does not conform to these requirements.

Zero Tolerance Spam Policy

OnSmart Network takes a zero tolerance stance against sending of unsolicited e-mail, commonly known as spam. Any user who sends out spam will have their account terminated without notice, and may be charged a one time administration fine of one hundred (\$100) dollars if we can show proof that the user sent the e-mail from our servers or network. OnSmart Network reserves the right to require changes or disable as necessary any web site, account, database, or other component that does not comply with this policy, at its sole discretion. OnSmart Network also reserves the right to make any such modifications in an emergency at our sole discretion.

Hosting Service Provider's Rights

You agree that OnSmart Network has the right to monitor the service electronically from time to time and to disclose any information as necessary to satisfy the law, or to protect itself or its subscribers. OnSmart Network reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of this agreement. OnSmart Network also reserves the right to refuse refunds in cases where OnSmart Network believes abuse has taken place.

OnSmart Network reserves the right to monitor any and all communications through or with our facilities. You agree that OnSmart Network is not considered a "secure communications medium" for the purposes of the ECPA, and that no expectation of privacy is afforded.

OnSmart Network does not set a usage limit on our Private Hosting customers, however if a customer consumes large amounts of system resources, OnSmart Network reserves the right to send an e-mail notice to the customer and set a limit on the customer's account.

Uptime Guarantee

OnSmart Network guarantees the service will be available 99.9% of the time for a "99.9% Uptime

Guarantee" to any of our customers in good financial standing. If we fail to meet the 99.9% Uptime Guarantee, the following credits will apply to those who qualify:

95.0% to 99.8% — OnSmart Network will credit back 25% of the monthly fee.

90.0% to 94.9% — OnSmart Network will credit back 50% of the monthly fee.

89.9% or below — OnSmart Network will credit back 100% of the monthly fee.

Customers must request such credit within seven (7) days after Network Unavailability. OnSmart Network will calculate Network Unavailability in a calendar month. Credits will not be provided to customers in the event that the Network Unavailability was due to (I) scheduled maintenance as posted from time to time at OnSmart Network, (ii) customer's behavior or the performance or failure of customer's equipment, facilities or applications, or (iii) circumstances beyond OnSmart Network's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability or interruption or delay in telecommunications or third party services (including DNS propagation), failure of third part software or hardware or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of your web site.

Sharing of Account Space & Resale Restrictions

You represent and warrant that the account you purchase is purchased either for yourself or on behalf of a client if you are a reseller. You agree that as a reseller, you are the individual solely responsible for all use of the account.

Refund Policy

OnSmart Network will refund payments for the service within thirty (30) days of account activation, with the exception of setup fees, domain registration fees and additional options charges. No refunds will be issued after thirty (30) days, whether in full or prorated. All refunds will be made by company check or issued back to the credit card within thirty (30) days of receipt of cancellation. Accounts terminated by OnSmart Network for violation of the Terms of Service do not qualify for the 30-day money back guarantee. Account setup fees and domain registration fees are not refundable.

Termination

OnSmart Network may terminate this agreement and your access to any or all OnSmart Network related services at any time, with or without cause, effective immediately. OnSmart Network shall have no responsibility to notify any third-party providers of services, merchandise, or information,

nor any responsibility for any consequences resulting from such discontinuance or lack of notification. Anyone determined by OnSmart Network to have violated these Terms may be barred from receiving any services from OnSmart Network.

You may terminate this Agreement at any time via our Online Cancellation Form. You may not terminate the account via the telephone or e-mail, nor does simply canceling the credit card terminate an account. No refund shall be issued. All termination requests must be received by OnSmart Network by midnight on the end of the current billing period in order to avoid paying for the next term's service. Account cancellations for accounts with a negative balance will be passed on to collections, and all services rendered to the party with the negative balance, including domain registrations, will be terminated.

Relationship of the Parties

Nothing contained in this Agreement shall be construed as creating any agency, legal representative, partnership, or other form of joint enterprise between the parties. Neither party shall have authority to contract for or bind the other in any manner whatsoever.

Disclaimer of Warranties / Limitation of Liability

THE ONSMART NETWORK HOSTING SERVICE PROVIDED IS PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. ONSMART NETWORK EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE ONSMART NETWORK SERVICE WILL BE ERROR-FREE, TIMELY, SECURE OR UNINTERRUPTED. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY ONSMART NETWORK, ITS EMPLOYEES, LICENSORS OR AGENTS WILL CREATE A WARRANTY; NOR MAY YOU RELY ON ANY SUCH INFORMATION OR ADVICE.

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, WILL ONSMART NETWORK, OR ITS AFFILIATES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE ONSMART NETWORK HOSTING SERVICE, INCLUDING BUT NOT LIMITED TO RELIANCE ON ANY INFORMATION OBTAINED ON THE ONSMART NETWORK SERVICE; OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR E-MAIL, LOSS OF OR DAMAGE TO DATA, ERRORS, DEFECTS, VIRUSES, 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 ONSMART NETWORK RECORDS, PROGRAMS OR SERVICES. YOU HEREBY ACKNOWLEDGE THAT THIS PROVISION WILL APPLY WHETHER OR NOT ONSMART NETWORK IS GIVEN NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND THAT THIS PROVISION WILL APPLY TO ALL SERVICES AVAILABLE FROM ONSMART NETWORK AND ITS AFFILIATES.

UNDER NO CIRCUMSTANCES, UNDER THE TERMS OF THIS AGREEMENT, SHALL DAMAGES INCLUDE LOSS OF BUSINESS, OR LOSS OF PROFITS WHETHER BASED ON BREACH OF AGREEMENT, BREACH OF WARRANTY, TORT, PRODUCT LIABILITY OR OTHERWISE.

THE TERMS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.

Copyright and Trademarks

All contents of the OnSmart Network Web Site are proprietary to OnSmart Network, and/or its suppliers and are protected under Copyright. All rights are reserved. OnSmart Network reserves any rights not expressly granted herein.

Furthermore, OnSmart Network retains all rights to the web design provided to you through the OnSmart Network Hosting Services.

Force Majeure

If by reason of failures of telecommunications or internet service providers, labor disputes, riots, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions or other causes beyond the control of OnSmart Network, OnSmart Network is unable to perform in whole or in part its obligations as set forth in this Agreement, then OnSmart Network shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make OnSmart Network liable to the User.

Governing Law

New York law shall govern this Agreement, and any dispute arising from the relationship between the parties to this Agreement, excluding any laws that direct the application of another jurisdiction's laws. In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights

or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and cost and expenses incurred, subject to the Limitation of Liabilities clause. The parties consent to the exclusive jurisdiction and venue of the courts of the State of New York or to any Federal Court located within the State of New York.

Arbitration

Any legal controversy or legal claim arising out of or relating to this Agreement or our services shall be settled by binding arbitration before the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in New York, as the parties to this agreement agree to be governed by the laws of New York. Either party may seek any interim or preliminary relief from a court of competent jurisdiction in California necessary to protect the rights or property of party pending the completion of arbitration. The prevailing party from arbitration shall be entitled to reasonable attorney's fees, which shall be set forth by the arbitrator(s). Judgment upon the award rendered may be entered in any court in the state of New York with jurisdiction. The decision of the arbitrator shall be final and binding on the parties. The parties shall bear equally all fees, costs and expenses of the arbitration, and each party shall bear its own legal expenses, attorneys fees, and costs of all experts and witnesses, provided, however, the arbitration panel may apportion between the parties, as said arbitrator may deem equitable, the cost incurred by either party.

Should either party file an action contrary to this provision, the other party may recover attorneys' fees and costs up to one thousand (\$1000) dollars.

Severability

If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

Survivability

The terms of this Agreement apply to those obligations that survive any cancellation, termination, or rescission, namely — warranty, indemnification, liability and limits thereon, rights and obligations upon and following termination and assignment.

Indemnification

You agree to defend, indemnify and hold harmless OnSmart Network against any and all claims, losses, penalties, causes of action, damages, liability, costs, expenses (including but not limited to reasonable attorneys' fees) or claims caused by or resulting indirectly from your use of the OnSmart Network service, without limitation or exception, including your violation of any third-party's rights, (including, without limitation, infringement of any copyright trademark, service mark, trade secrets, right of privacy or publicity or any other third party right). The terms of this section shall survive the termination of your relationship with.

Remedy

You agree that your sole and exclusive remedy to any issues relating to the OnSmart Network Hosting Service is to discontinue using the Service.

Assignment

In the event of a merger or consolidation of OnSmart Network, the surviving or new corporation and any subsidiaries are similarly subject to the rights and obligations of this Agreement.

Entire Agreement

Unless otherwise specified herein, this Agreement constitutes the complete and exclusive statement of the Agreement between the parties regarding the products and services provided hereunder, and supercedes any prior Agreements between the parties with respect thereto.

Waiver

The failure of OnSmart Network to enforce a provision of this Agreement shall not be construed as a waiver or limitation of OnSmart Network's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

Modification of Terms

OnSmart Network reserves the right to modify this policy at any time and without advance notice, effective upon making the modified provisions available on the OnSmart Network Web Site. You are responsible for regularly reviewing these documents. Continued use of the OnSmart Network Services after any such changes shall constitute your consent to such changes. OnSmart Network does not and will not assume any obligation to notify you of any changes to these Terms.