

INTERNET ADVERTISING CONTRACT

This agreement ("Agreement") is entered into between S&M Computers ("Host Provider") and _____ ("Customer") on _____ (the "Effective Date").

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein, the parties agree as follows:

1. **HOST PROVIDER'S BUSINESS.** Host Provider operates a site on the World Wide Web known as S&M Computers (the "Host Site") located at <http://www.smcomputers.ca>. The Host Site contains Advertisements for third-party Web sites. An Advertisement is a graphical and text-based description of an advertised site with a hypertext pointer that, when clicked by a mouse, moves Host Site end users from the Host Site to the advertised site designated by the Customer ("Advertisement").

2. **GENERAL UNDERTAKING.** Customer operates a site on the World Wide Web known as _____ (the "Advertised Site") located at <http://www.smcomputers.ca/advertisements.php>. Customer wishes to place an Advertisement for Customer's Web Site on the Host Site. With this Agreement, Customer request the Host Provider to provide the services stated in Section 3, and Host Provider agrees to provide those services, for a term of _____ beginning on _____, 200__.

3. **SERVICES.** Host Provider agrees to provide the following services:

Targeted Page Display. The Advertisement will be displayed on the following specific page(s) of the Host Site: <http://www.smcomputers.ca/advertisements.php>. The contents of the Targeted Display Page shall remain similar to the contents on the Effective Date.

4. **ADVERTISING FEE.** For the services described in Section 3, Customer agrees to pay Host Provider a fee of \$19.95 per month (*\$239.40 per year*) plus any applicable taxes ("Advertising Fees"). The fee is payable the first day of each month or yearly upon receipt of invoice and choice of payment. Delinquent accounts are subject to monthly interest and service charges at a rate of \$11.97 per month (5% per annum, or the maximum allowed by law), plus collection costs (including, without limitation, reasonable attorneys' fees), until paid in full.

Host Provider reserves the right to suspend further display of the Advertisement or cancel this Agreement on ten (10) days written notice to Customer if Customer fails to pay an amount when due.

5. **ADVERTISEMENT.** Customer will submit its Advertisement to the Host Provider by _____, 200____, in the format specified in Exhibit A (Advertising Submission Specifications).

Host Provider may, in its sole judgment, reject any Advertisement that does not meet the specifications stated in Exhibit A, and it reserves the right to reject or terminate the display of an Advertisement if it fails to conform to applicable laws and regulations, Host Site's policies, or the public interest. Host Provider may reject or remove an Advertisement for an Advertised Site that is not functional or that Host Provider deems unsuitable for linking to the Host Site. If Host Provider rejects Customer's Advertisement or terminates its display, then this Agreement shall be deemed terminated and Host Provider will return any prepaid advertising fees to Customer (in which case refund of those fees shall be Customer's sole remedy for the termination of this Agreement).

6. HOST PROVIDER'S OBLIGATIONS. The Host Provider shall use reasonable commercial efforts to maintain the Host Site and display the Advertising 24 hours per day each day during the term of the Agreement. Host Provider warrants to Customer that it will make a reasonable effort to perform its services under this Agreement in a competent manner. Host Provider does not warrant that it will be able to correct all reported defects or that use of the Host Site, Advertisement, or that the hypertext pointer to the Advertised Site will be uninterrupted or error-free. Host Provider makes no warranty regarding features or service provided by third parties. **HOST PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND FITNESS FOR A PARTICULAR PURPOSE.** The Host Provider reserves the right, in its sole discretion, to determine all matters concerning hardware and software selection and configuration, telecommunications, system components, advertising categories, positioning of Customer's Advertisement (except for Targeted Page Display), and other operational and administrative matters for the Host Site.

7. INTELLECTUAL PROPERTY RIGHTS.

a. Each party to this Agreement owns its respective Web site and the material ad content on its Web site. Except as stated in Section 7(b), nothing in this Agreement grants one party any right, title, or license to the other party's intellectual property rights.

b. Customer grants Host Provider a nonexclusive license to set up and display the Customer's Advertisement (including any trademarks and service marks shown) and to hyperlink to the Advertised Site during the term of this Agreement. Upon termination of this Agreement, the Host Provider will uninstall the Customer's Advertisement, destroy all copies of it, cease further display of the Advertisement, and terminate the hyperlink to Customer's Advertised Site.

c. Nothing in this Agreement grants Customer any right to use the name, trademark, or service mark of Host Provider in any advertisement, sales promotion, or press release without Host Provider's prior written approval.

8. **HOST PROVIDER'S LIABILITY.** Customer agrees that Host Provider's liability for any error in displaying the Advertisement or any failure to provide services shall not exceed the Advertising Fees paid by Customer in the three months preceding the event giving rise to Customer's claim. If Host Provider is unable to display the Advertisement at any time during the term of this Agreement due to acts of God, war, riot, strikes, systems or transmission failure, or for any other reason beyond its reasonable control, such failure to display, the Advertisement will not constitute a breach of this Agreement; provided, however, that Customer may terminate this Agreement if such failure to display the Advertisement continues for more than 20 days. If such failure to display the Advertisement is caused by an act or omission of the Customer, Host Provider shall be entitled to full payment of all Advertising Fees. If such failure to display the Advertisement is not caused by an act or omission of the Customer, but a failure of Host Provider to meet its obligations, Host Provider will allow a pro-rated reduction in the Advertising Fee. **IN NO EVENT SHALL HOST PROVIDER BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SALES OR PROFIT, LOST DATA, BUSINESS INTERRUPTION OR ATTORNEYS' FEES), EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY.**

9. **CUSTOMER'S WARRANTIES.** The Customer Warrants that the Advertisement:

- a. Is truthful and will not violate any foreign, federal, provincial, or local law or regulation;
- b. Will not infringe or misappropriate any copyright, trademark, patent, trade secrets, publicity, or privacy rights of any person or third-party in any jurisdiction;
- c. Does not contain any material which is unlawful, harmful, abusive, hateful, obscene, threatening, or defamatory.

Customer agrees to defend, indemnify, and hold harmless Host Provider, its officers, directors, sublicensees, employees, and agents, from and against any claims, actions, or demands, including without limitation reasonable legal and accounting fees, alleging or resulting from the breach of the warranties in this Section 9. Host Provider shall provide notice to Customer promptly of any such claim, suit, or proceedings and shall assist Customer, at Customer's expense, in defending any such claim, suit, or proceeding.

10. **CHANGES TO ADVERTISEMENT.** Customer or its agents may make changes to the Advertisement no more often than twice a year. Changes must be in the format stated in Exhibit A. After changes have been received by the Host Site, Host Site will have 10 (ten) business days to implement the changes.

11. **TERMINATION**

a. Except as provided below, this Agreement will terminate without further action upon the expiration of the period set forth in Section 2. This Agreement may be terminated by the non-breaching party upon 30 days prior written notice upon the material breach of a provision of this Agreement; provided that if such breach is cured within such period, the Agreement shall continue in effect.

b. Customer acknowledges that Host Provider may terminate this Agreement and remove the Advertisement if the Host Provider believes in its sole discretion that the Advertisement breaches any warranty. In the event of such termination, Host Provider shall be entitled to receive full payment for all Advertising Fees incurred by Customer up to the date of termination.

c. This Agreement will be terminated automatically, without notice, (i) upon the institution by or against Host Provider of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of Host Provider's debts; (ii) upon Host Provider making an assignment for the benefit of creditors; or (iii) upon Host Provider's dissolution.

12. GENERAL PROVISIONS. This Agreement will be governed by and construed in accordance with the laws of Canada and the Province of Ontario as applied to agreements entered into and to be performed entirely within that province between residents of that province. This Agreement, including any Exhibits to this Agreement, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. The Agreement may not be modified except by written instrument signed by both parties. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party. Customer may not assign its rights or obligations arising under this Agreement without Host Provider's prior written consent. Host Provider may assign its right and obligations under this Agreement. This Agreement will be for the benefit of Host Provider's successors and assigns, and will be binding on Customer's heirs, legal representatives, and permitted assignees. If any dispute arises between the parties with respect to the matters covered by this Agreement that leads to a proceeding to resolve such dispute, the prevailing party in such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees, and out-of-pocket costs incurred in connection with such proceedings, in addition to any other relief to which it may be entitled. All notices, requests, and other communications required to be given under this Agreement must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by hand to the party to whom such notice is required or permitted to be given. Any such notice will be considered to have been given when received, or if mailed, five business days after it was mailed, as evidenced by the postmark. The mailing address for notice to either party will be the address shown on the signature page of this Agreement. Either party may change its mailing address by notice as

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provided by this Section. The following provisions shall survive termination of this Agreement:
Sections 9 and 10.

Customer Signature: _____

Effective Date: _____

S&M Computer Signature: _____