



## Market America Webcenter



### Acceptable Use Policy

#### **MARKET AMERICA TERMS OF SERVICE FOR WEBSITE DESIGN AND WEBSITE HOSTING**

My Webcenter  
makes e-commerce  
easy.

1.0 The Market America Service ("Service") is provided to you ("you" or "User") under the terms and conditions of this Market America Website Service Agreement and written amendments thereto and any operating rules or policies (collectively, the "Agreement"). Market America reserves the right, in its sole discretion, to change, modify, add or remove all or part of the Agreement at any time.

1.1 By accepting the terms and conditions of the Agreement, User (a) represents and warrants that (1) it is a company or business located within the United States, Canada or Australia, (2) authorizes the representatives initiating and accessing the web site services to do so on its behalf, (3) will restrict such representatives to persons 18 years old or older, (c) agrees to provide true, accurate, current and complete information about User as prompted by the Account Registration Form; and (c) agrees to maintain and update this information to keep it true, accurate, current and complete. If any information provided by User is untrue, inaccurate, not current or incomplete, Market America has the right to terminate User's account and refuse any and all current or future use of the Service.

1.2 BY COMPLETING THE ACCOUNT REGISTRATION PROCESS AND CLICKING THE "I ACCEPT" OR "I AGREE" BUTTON, OR BY UTILIZING OR ALLOWING OTHER PERSONS TO UTILIZE THE WEB SITE PROVIDED IN ANY WAY, USER ("User" or "you") AGREES TO BE BOUND BY THE AGREEMENT. If these terms and conditions or any future changes are unacceptable to you, you may cancel your account pursuant to Section 7.1, regarding termination of service.

#### 2.0 DESCRIPTION OF MARKET AMERICA SERVICE.

2.1 Market America hosts sites on the World Wide Web ("Sites") and provides Users with access to certain Market America Software ("Software") to facilitate the creation and maintenance of Sites ("Online Site Services").

2.2 No Site submitted to Market America may contain any content, products, services or other information that, in Market America's sole determination, may be illegal to sell under any applicable law, statute, ordinance or regulation, that may infringe or violate anyone's rights, or that, Market America believes, in its sole discretion, is inflammatory, offensive, or otherwise inconsistent with the spirit of Market America. These criteria are minimum requirements only and Market America in its sole discretion may consider other criteria before accepting a Site. **NOTHING IN THIS AGREEMENT OBLIGATES MARKET AMERICA TO LIST, LINK TO, ACCEPT OR OTHERWISE HOST YOUR SITE ANYWHERE ON MARKET AMERICA.**

#### 3.0 USER'S OBLIGATIONS





3.1 User acknowledges and agrees that it shall be responsible for all goods and services offered at User's Site, all materials used or displayed at the Site, and all acts or omissions that occur at the Site or in connection with User's account or password. Certain Sites may be subject to additional requirements.



3.2 User agrees to display in the Site User's contact information, including but not limited to User's company name, address, telephone number, fax number and e-mail address. User also agrees to update such information to keep it true, accurate, current and complete.



3.3 User agrees that any and all press releases and other public announcements related to this Agreement and subsequent transactions between Market America and User, including the method and timing of such announcements, must be approved in advance by an authorized representative of Market America in writing. Market America reserves the right to withhold approval of any public announcement in its sole discretion. Without limitation, any breach of User's obligation regarding public announcements shall be a material breach of the Agreement.



3.4 User represents and warrants that it has full power and authority under all relevant laws and regulations: 1) To offer and sell the goods and services offered at the Site, including but not limited to holding all necessary licenses from all necessary jurisdictions; 2) to engage in the advertising and sale of the goods or services offered at the Site; 3) to copy and display the materials used or displayed at the Site.

3.5 User represents and warrants that it will not engage in any activities: 1) that constitute or encourage a violation of any applicable law or regulation, including but not limited to the sale of illegal goods or the violation of export control or obscenity laws; 2) that defame, impersonate or invade the privacy of any third party or entity; 3) that infringe the rights of any third party, including but not limited to the intellectual property, business, contractual or fiduciary rights of others and 4) that are in any way connected with the transmission of "junk mail", "spam" or the unsolicited mass distribution of e-mail or with any unethical marketing practices.

3.6 Market America reserves the right to refuse to host or continue to host any Site which it believes, in its sole discretion: (1) offers for sale goods or services, or uses or displays materials, that are illegal, obscene, vulgar, offensive, dangerous or are otherwise inappropriate; (2) has substantially changed its Site from the time it was accepted; (3) received a significant number of complaints for failing to be reasonably accessible to customers or timely fulfill customer orders; (4) has become the subject of a government complaint or investigation; or (5) has violated or threatens to violate the letter or spirit of the Agreement.

#### 4.0 PROPRIETARY RIGHTS

4.1 Software License. Market America hereby grants User a non-exclusive, non-transferable license to use the Software in object code form only on a server controlled by Market America for the sole purpose of creating and maintaining Sites on such server. User is not being granted any right to copy the Software or to use it on computers other than a server controlled by Market America. User may not use Web pages or parts of Web pages generated by means of the Software, other than content that originates from and is proprietary to User, on any server other than the servers controlled

by Market America without Market America' express written agreement.

- 4.2 User also acknowledges and agrees that the Software is intended for access and use by means of web browsing software and that Market America does not commit to support any particular browsing platform. Market America reserves the right at any time to revise and modify the Software, release subsequent versions thereof and to alter features, specifications, capabilities, functions and other characteristics of the Software, without notice to User. If any revision or modification to the Software materially changes User's ability to conduct business, User's sole remedy is to terminate the Agreement pursuant to Section 7.1 regarding termination of service.
- 4.3 Market America Intellectual Property. User acknowledges and agrees that content available from Market America or the Service, including but not limited to text, software, music, sound, logos, trademarks, service marks, photographs, graphics, or video, is protected by copyright, trademark, patent or other proprietary rights and laws and may not be used in any manner other than as specified in Section 4.1 above.
- 4.4 User's Property. User agrees that by using the Service, User grants Market America and its successors and assigns, a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license under User's copyrights and other intellectual property rights, if any, in all material and content displayed in User's Site to use, distribute, display, reproduce, and create derivative works from such material in any and all media, and to display in any manner and on any Market America property the results of search queries and comparisons conducted on Market America. User also grants Market America the right to maintain such content on Market America's servers during the term of the Agreement and to authorize the downloading and printing of such material, or any portion thereof, by end users for their personal use.
- 4.5 Unauthorized Access. Users shall not attempt to gain unauthorized access to any servers controlled by Market America.

#### 5.0 FEES AND PAYMENT

- 5.1 User shall pay Market America pursuant to one of the following payment plans, as selected by Market America in its sole discretion at time of account registration. Time is of the essence for all payments
- 5.2 Direct Billing Payment Plan: User shall pay an account initiation fee, monthly service fee and other fees as specified at time of registration and as modified from time to time pursuant to Agreement. All such fees are due and payable in U.S. dollars to Market America. User agrees to make payment 1) by charge to the credit card number given by User to Market America on the date of registration, 2) automatically without further action by User, by charge to same credit card number on the first day of each month thereafter until service is terminated pursuant to Section 6 or Section 7 below and 3) automatically without further action by User, by charge to same credit card number for any unpaid services or fees as of the date of service termination, pursuant to Section 6 or Section 7 below.
- 5.3 All amounts due and unpaid for more than 30 days from the due date specified by the payment plan shall be deemed delinquent. Delinquent payments may result in the imposition of a late fee, at which the rate of one percent of the unpaid balance per month, or the maximum allowable under applicable state law, whichever is higher. Acceptance of late or partial

payments (even if marked "Paid in Full") shall not waive any of Market America's rights to collect the full amount due under this AGREEMENT. Notice of any disputes regarding payment or charges must be received by Market America at [help@mawebcenters.com](mailto:help@mawebcenters.com) within 60 days after the payment is due or User will waive any objection.

- 5.4 Market America may upon 30 days prior notice to User, alter its fee schedules and terms of the Agreement.

## 6.0 TERMS

- 6.1 Term. The term of the Agreement shall be 30 days commencing on the date that User's credit card is first charged for the Site or when the User begins utilization of the Site by electronically confirming with the "I Accept", "I Agree", or "Purchase My Site" button, or whenever User utilizes or allows others to utilize the web site provided, whichever sooner occurs. The term shall automatically renew for successive monthly periods at renewal rates applicable at the time, unless notice of non-renewal is provide in accordance with Section 6.2, below; provided, however, that to qualify for each renewal User must at the time of renewal be in substantial compliance with the material terms and conditions of the Agreement. Market America shall have the right but not the obligation to review any Site for compliance with the Agreement as part of the renewal process or at any time.
- 6.2 Trial Period: User may terminate the Agreement within the first ten calendar days after Site acceptance is confirmed with the "I Accept" or "I Agree" button, or after User utilizes or allows other to utilize the web site provided, whichever sooner occurs. Any charges made to User's credit card account for plan services will be refunded to User within thirty days of receipt of termination notice. Termination notice under this Section 6.2 must be provided in the manner described in Section 14.
- 6.3 Non-Renewal. Either party, in its sole and absolute discretion, may give notice of nonrenewable with or without cause and without stating any reason therefor. Except as specified in Section 6.1 above, any notice of nonrenewable must be given at least thirty days prior to the end of the term then in effect and in the manner described in Section 14 regarding notice. Plan Terms accepted at time of Service initiation may specify that costs incurred by Market America but deferred, including costs to register User's domain name and Site design, will be due and owing upon non-renewal notice, where User has not completed Market America term commitments for these or other optional Market America services received by User.

## 7.0 TERMINATION

- 7.1 Termination. Either party may terminate the Agreement on 30 days notice if the other party has materially breached or is otherwise not in compliance with any provision of the Agreement, and such breach or noncompliance is not cured within such 30 day period. Market America reserves the right to immediately suspend any customer access to the Site, without notice, until such breach or noncompliance is cured.
- 7.2 Termination for Illegal or Other Activity. Notwithstanding the foregoing, Market America may, but has no duty to, immediately terminate User and remove it from Market America servers without notice if Market America in its sole discretion concludes that User is engaged in illegal activities or the sale of illegal or harmful goods or services or is engaged in activities or sales

that may damage the rights of Market America or others. Any termination under this Section 7.2 shall take effect immediately and User expressly agrees that it shall not have any opportunity to cure.

- 7.3 Waiver. User expressly waives any statutory or other legal protection in conflict with the provisions of this Section 7.
- 7.4 Deletion of Information. Upon termination, Market America reserves the right to delete from its servers any and all information contained in User's account, including but not limited to order processing information, mailing lists and any Web pages generated by the Software.
- 7.5 This provision expressly confirms that Section 4 (Proprietary Rights), Section 10 (Indemnity), and Section 11 (Disclaimer of Warranties and Liabilities) of this agreement shall survive any termination of the Agreement.

## 8.0 USER PRIVACY

User Information. Market America maintains information about User and Site on Market America servers, including but not limited to User's account registration information and clickstream data ("User Information"). User agrees that Market America may use User information for marketing or other promotional purposes and may share this information with its affiliates and partners. To remove this consent at any time, User must notify Market America in writing to: CUSTOMER RELATIONS, Market America, 3660 Wilshire Boulevard, 4th Floor, Los Angeles, California 90010, providing all User's contact information, including but not limited to: User's Company Name, address, telephone number, fax number, web site address and e-mail address.

- 8.1 User agrees that Market America may disclose User information in good faith belief that such an action is reasonably necessary: (a) to comply with the law; (b) to comply with the legal process; (c) to enforce the AGREEMENT; (d) to respond to claims that User or Site is engaged in activities that violate the rights of third parties; or (e) to protect the rights or interest of Market America, or others; provided, however, that nothing in this section shall impose a duty on to make any such disclosures.
- 8.2 Password. User shall receive a password from Market America to provide access to and use of the Software and Online Site Services. User is entirely responsible for any and all activities, which occur under User's account and password. User agrees to keep its password confidential, to allow no other person or company to use its account, and to notify Market America within 24 hours if User has any reason to believe that the security of its account has been compromised.
- 8.3 Technical Access. User acknowledges and agrees that technical processing of User Information is and may be required: (a) for the Service to function; (b) to conform to the technical requirements of connecting networks; (c) to conform to the technical requirements of the Service; or (d) to conform to other, similar technical requirements. User also acknowledges and agrees that Market America may access User's account and its contents as necessary to identify or resolve technical problems or respond to complaints about the Service.
- 8.4 Market America is not liable for any lack of privacy, which may be experienced with regard to services provided under this AGREEMENT. User

authorizes Market America's monitoring and recording of calls to Market America concerning User's account or services.

## 9.0 MAINTENANCE AND SUPPORT

- 9.1 User can obtain assistance with any technical difficulty that may arise in connection with User's utilization of the software or Online Site Services by requesting assistance by email to [help@mawebcenters.com](mailto:help@mawebcenters.com). Market America reserves the right to establish limitations on the extent of such support, and the hours at which it is available.
- 9.2 User is responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for its access to and use of the Software and Online Site Services and User shall be responsible for all charges related thereto.

## 10.0 DISCLAIMER OF WARRANTIES AND LIABILITIES:

User agrees to indemnify and hold harmless Market America and its parents, subsidiaries, affiliates, officers, directors, shareholders, employees, and agents, from any claim or demand, including reasonable attorneys fees, made by any third party due to or arising out of Users conduct, Users use of any alleged violation of the AGREEMENT, or any alleged violation of any rights of another, including but not limited to User use of any content, trademarks, service marks, trade names, copyrighted or patented material, or other intellectual property used in connection with Users Site. Market America reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by User, but doing so shall not excuse Users indemnity obligations. User agrees to pay Market America's reasonable attorney and expert witness fees and costs incurred in enforcing this AGREEMENT.

## 11.0 INDEMNITY

THE SERVICE AND SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

NEITHER THIS AGREEMENT OR ANY DOCUMENTATION FURNISHED UNDER IT IS INTENDED TO EXPRESS OR IMPLY ANY WARRANTY THAT THE ONLINE SITE SERVICES WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE OR THAT THE SOFTWARE WILL PROVIDE UNINTERRUPTED, TIMELY OR ERROR FREE SERVICE.

THE SECURITY MECHANISM INCORPORATED IN THE SOFTWARE HAS INHERENT LIMITATIONS AND USER MUST DETERMINE THAT THE SOFTWARE ADEQUATELY MEETS ITS REQUIREMENTS.

USER ACKNOWLEDGES AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT ITS OWN DISCRETION AND RISK AND THAT USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. MARKET AMERICA, AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS,



EMPLOYEES AND AGENTS, SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES OR LEGAL THEORIES WHATSOEVER, FOR ANY LOSS OF BUSINESS, PROFITS OR GOODWILL, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, EVEN IF MARKET AMERICA IS AWARE OF THE RISK OF SUCH DAMAGES, THAT RESULT IN ANY WAY FROM USER'S USE OR INABILITY TO USE THE ONLINE SITE SERVICES OR THE SOFTWARE, OR THAT RESULT FROM ERRORS, DEFECTS, OMISSIONS, DELAYS IN OPERATION OR TRANSMISSION, OR ANY OTHER FAILURE OR PERFORMANCE OF THE ONLINE SERVICES OR THE SOFTWARE.

MARKET AMERICA'S LIABILITY TO USER SHALL NOT, FOR ANY REASON, EXCEED THE AGGREGATE PAYMENTS ACTUALLY MADE BY USER TO MARKET AMERICA OVER THE COURSE OF THE EXISTING TERM.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR LIABILITIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

#### 12.0 NO RESALE OR ASSIGNMENT OF SERVICE

User agrees not to resale or assign or otherwise transfer its rights or obligations under the AGREEMENT without the express written authorization of Market America.

#### 13.0 FORCE MAJEURE

Neither party shall be liable to the other for any delay or failure in performance under the AGREEMENT resulting directly or indirectly from acts of nature or causes beyond its reasonable control.

#### 14.0 THIRD-PARTY GOODS OR SERVICES

The Market America premium content package is included with your \$9.95 monthly hosting package. All content providers and content are subject to change. Included in the premium content package are two monthly issues of ESPN The Magazine and unlimited online access to ESPN Insider. The value of your monthly subscription to ESPN The Magazine is \$1.38 per month, which is non-deductible. You'll also receive membership to 3 other premium sites.

- 14.1 MARKET AMERICA may from time to time send e-mail messages to User containing advertisements, promotions and other inducements offered by third parties. MARKET AMERICA makes no representation or warranty with respect to the content of any such third party communications or with respect to any goods or services which may be obtained in response to such communications and User agrees that MARKET AMERICA shall not have any liability with respect thereto, nor shall any such messages amend the Terms and Conditions unless expressly agreed to in writing by MARKET AMERICA. MARKET AMERICA may provide links to web sites operated by parties other than MARKET AMERICA. Such links are provided for User's convenience only. MARKET AMERICA does not control such web sites and is not responsible for their contents. MARKET AMERICA's inclusion of links to such web sites does not imply any endorsement of the material on such web sites or any association with their operators.

## 15.0 NOTICES

Any notices or communications under the AGREEMENT shall be by electronic mail or in writing and shall be deemed delivered upon receipt to the party to whom such communication is directed, at the addresses specified below. If to Market America: (1) General notices, including cancellation notice or other account inquiries, shall be addressed to [help@mawebcenters.com](mailto:help@mawebcenters.com); (2) all legal notices and notices which purport to change the Agreement or assert entitlements under the Agreement must be sent in writing to General Counsel, Market America, 3660 Wilshire Boulevard, 4th Floor, Los Angeles, CA 90010. Notices to User shall be addressed to the electronic address specified when User opens an account with Market America Site, or such other address as either party may give the other by notices as provided above. User is responsible for notifying Market America of any changes in address. User notice must identify User contact information, including but limited to: User Company name, address, telephone number, fax number, web site address and e-mail address.

16.0 ENTIRE AGREEMENT: The AGREEMENT constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between parties.

## 17.0 DISPUTE RESOLUTION

All disputes concerning the AGREEMENT and the relationship between User and Market America, including but not limited to disputes relating to any service, rating of services, transfer of service, performance of service, payments on account, credits, promotions, special offers, performance, interruption of service or any other terms under AGREEMENT shall be resolved through the following procedures:

User must first present any claim or dispute to Market America by contacting [help@mawebcenters.com](mailto:help@mawebcenters.com). User must request arbitration if User's claim or dispute cannot be resolved within 60 days and User chooses to continue dispute.

Arbitration is mandatory and binding; counterclaims may be asserted. Arbitration shall be conducted in accordance with American Arbitration Association ("AAA") Commercial Dispute Resolution rules and procedures, as modified by this AGREEMENT.

User agrees that this AGREEMENT evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accord with the Federal Arbitration Act and federal arbitration law. The parties agree that Los Angeles, California shall be the location for any arbitration proceedings. An arbitrator may not award relief in excess of or contrary to what this AGREEMENT provides, order consolidation or class arbitration, or award punitive damages or any other damages aside from the prevailing party's actual damages.

Any Arbitration shall be confidential and neither User nor Market America may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgement on any arbitration award may be entered in any court having proper jurisdiction. If any portion of this arbitration clause is



determined by a court to be inapplicable or invalid, the remainder shall still be given full force and effect.

**WAIVER OF PUNITIVE DAMAGE CLAIMS AND CLASS ACTIONS:** By this AGREEMENT, both USER and MARKET AMERICA are waiving certain rights to litigate a dispute in court. If for any reason, this arbitration clause is deemed inapplicable or invalid, USER and MARKET AMERICA both waive, to the fullest extent allowed by law, any claims to recover punitive or exemplary damages and any right to pursue any claims on a class or consolidated basis or in a representative capacity.

For any matter not subject to arbitration, User and Market America agree to submit to the personal and exclusive jurisdiction of the United States District Court for the Central District of California or the Los Angeles County Superior Court, as appropriate.

For any dispute, User and Market America agree that applicable federal laws, federal or state tariffs, if any, and the laws of the state of California shall govern, without regard to its conflict of law provisions.

Market America's failure to exercise or enforce any right or provision of the AGREEMENT shall not constitute a waiver of such right or provision. If any provision of AGREEMENT is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the arbitrator or the court should endeavor to give effect to the parties intentions as reflected in the provision, and agree that the other provisions of the AGREEMENT remain in full force and effect.

User agrees that regardless of any statute or law to the contrary, and any claim or cause of action arising out of or related to use of the Service or the AGREEMENT must be filed within one (1) year after such claim or cause of action arose, or be forever barred.

The section titles in the AGREEMENT are for convenience only and have no legal or contractual effect.

#### 18.0 DISCLAIMER TO CUSTOMERS OF MARKET AMERICA CUSTOMERS AND THIRD PARTIES

Every site hosted by Market America is individually owned and operated by the merchant and is the sole responsibility of that merchant.

Market America expressly disclaims any responsibility or liability for any damage, loss or injury arising out of: the activities of any merchant; the goods or services offered or the content displayed by or in any site; for any loss or injury resulting from access or inability to access any site; or arising out of your purchase or use of goods or services offered by merchants may be prohibited in your area. If you have any questions or complaints regarding the goods or services of any site, please contact the site merchant directly and not Market America. Most sites will have a link to their contact information on their home page.

#### 19.0 MARKETING OF SERVICES

Market America may use telemarketing, direct mail campaigns, independent agents, or any combination thereof, in the marketing of its services. Each agent, telemarketer and all marketing personnel are

instructed as to its services and the exclusive application of the Agreement. Market America expressly disclaims and User acknowledges any Market America liability for any such agent's, telemarketer's or marketing personnel's actions, inactions, representations, promises and/or statements which in any material way conflict with, modify, or are in contravention of the provisions of Agreement or any tariff under which Market America's optional telecommunications services are provided. Each User accepts the notice provided by the terms of Agreement and the constructive notice of the terms, conditions and rates governing Market America's telecommunications services provided under tariffs, such as those with the Federal Communications Commission and state public utility commissions. No agent, telemarketer or marketing personnel may change, alter, revise, move or terminate the terms of any User's service without the express written and authorized consent of Market America.

Version: 1.3

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