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## **Advantage Marketing Solutions Hosting Agreement**

Welcome to Advantage Marketing Solutions web hosting services. This Hosting Agreement, as part of Advantage Marketing Solutions Legal Agreement, governs your purchase and use, in any manner, of all web hosting services, including the Shared Hosting Services and the Dedicated Hosting Services, (collectively, the "Services") as described on [SiteGround.com](http://SiteGround.com), ordered by you and accepted by Advantage Marketing Solutions, and describes the terms and conditions that apply to such purchase and use of the Services. For purposes of this Agreement, the Shared Hosting Services include the E-Commerce Services. You must register and accept the terms of this Agreement in order to use the Services.

### **Use of Services**

#### **1) Term**

Hosting shall be for an "Initial Term" of twelve (12) months if you register for Shared Hosting Services. Hosting will be automatically renewed (the "Renewal Term") at the end of the Initial Term for the same period as the Initial Term unless you provide Advantage Marketing Solutions with notice of termination at least thirty (30) days prior to the end of the Initial Term or the Renewal Term, whichever is then applicable. You must provide Advantage Marketing Solutions with your notice of termination according to the "Cancellation/Termination" section. Upon canceling your service, you may be asked to provide Advantage Marketing Solutions with additional customer identification information so that Advantage Marketing Solutions may properly identify you and your account.

#### **2) Termination Policy**

If you terminate your receipt of the Services prior to the end of the Initial Term or the Renewal Term, whichever is then applicable, (a) Advantage Marketing Solutions shall not refund to you any fees paid in advance of such termination and (b) you shall be required to pay the lesser of three (3) times the standard monthly charge or 100% of Advantage Marketing Solutions standard monthly charge for each month remaining in the term, unless otherwise expressly provided herein. Your termination request must be submitted to Advantage Marketing Solutions in writing. **Notice:** In the event you need to cancel, please specify whether you would like to cancel your domain name only, your Web hosting plan only, or both your domain and hosting accounts. The cancellation or expiration of your domain name does not automatically terminate your hosting account (or vice versa). Your hosting account billing term automatically renews upon completion, unless you notify us you would like to cancel your account.

#### **3) Material and Product Requirements**

Unless you have contracted Advantage Marketing Solutions to create your web content and/or maintain it for you, you must ensure that all material and data placed on Advantage Marketing Solutions equipment is in a condition that is "server-ready," which is in a form requiring no additional manipulation by Advantage Marketing Solutions. Advantage Marketing Solutions will make no effort to validate any of this information for content, correctness or usability. In the event that your material is not "server-ready," Advantage Marketing Solutions has the option at any time to reject this material. Advantage Marketing Solutions will notify you of its refusal of the material and afford you the opportunity to amend or modify the material to satisfy the needs and/or requirements of Advantage Marketing Solutions. Use of the Services requires a certain level of knowledge in the use of Internet languages, protocols and software. This level of knowledge varies depending on the anticipated use and desired content of your web site. You must have the necessary knowledge to create and maintain a web site. It is not Advantage Marketing Solutions responsibility to provide this knowledge or customer support outside of the Services agreed to by you and Advantage Marketing Solutions.

#### **4) Bandwidth, Storage, and Email Usage**

You agree that use of the Services hereunder will not exceed the bandwidth, storage and email usage limits outlined for your plan. If you use any bandwidth or storage space in excess of the agreed upon number of megabytes per month or if you exceed email storage and attachment size limitations, Advantage Marketing Solutions may, in its sole discretion, assess you with additional charges, suspend the performance of the Service, or terminate this Agreement. In the event that Advantage Marketing Solutions elects to take any corrective action, you will not be entitled to a refund of any unused pre-paid fees. Advantage Marketing Solutions servers are not intended to be used for permanent storage of your emails. You are expected to download email onto your local computer via an email client, such as Microsoft Outlook, Mozilla Thunderbird or similar program. Webmail is provided as a convenience and should not be used as a primary email/calendaring system.

#### **5) Domain Names**

As part of the Services, you will provide Advantage Marketing Solutions with a registered domain name(s) or Advantage Marketing Solutions will register such domain name(s) selected by you, provided that such domain name is available for registration and does not violate any registration services' policies, or any law or regulation. You agree to promptly reimburse Advantage Marketing Solutions for any fees paid by Advantage Marketing Solutions for registration services with respect to the registration and maintenance of such domain name(s). In the event of any dispute or cause of action arising out of or related to your domain name used in connection with the Services, upon your request Advantage Marketing Solutions will attempt to register an alternative domain name chosen by you. You agree to be bound by the terms of Advantage Marketing Solutions then current domain name policy and/or the policies of the national DNS registration authorities to which you become subject upon registration of your domain name. The inability to use a domain name shall not entitle you to a refund by Advantage Marketing Solutions of any fees paid with respect to the registration of such unusable domain name.

#### **6) Advantage Marketing Solutions Materials**

Advantage Marketing Solutions shall also maintain and control ownership of all Internet protocol ("IP") numbers and addresses that may be assigned to you by Advantage Marketing Solutions. Advantage Marketing Solutions reserves, in its sole discretion, the right to change or remove any and all such IP numbers and addresses.

#### **7) File Backup**

Advantage Marketing Solutions is not responsible for Client's files residing on Advantage Marketing Solutions servers. These files include, but are not limited to, all website files, email, calendars, contacts and database files. You are solely responsible for independent backup of data stored on our servers. There are multiple ways you are able to access and backup your data. If you need additional information on these options please contact us at [info@calladvantagenow.com](mailto:info@calladvantagenow.com). Advantage Marketing Solutions performs regular backups on a daily basis for emergency purposes, but we cannot be held responsible for any lost data files, email or other.

## **8) Intellectual Property Rights**

### **A. Your License Grant to Advantage Marketing Solutions**

You hereby grant to Advantage Marketing Solutions a non-exclusive, worldwide, and royalty-free license for the Initial Term and the Renewal Term, if applicable, to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use your content as necessary for the purposes of rendering and operating the Services to you under this Agreement. You expressly (a) grant to Advantage Marketing Solutions a license to cache materials distributed or made available for distribution via the Services, including content supplied by third parties, and (b) agree that such caching is not an infringement of any of your intellectual property rights or any third party's intellectual property rights.

### **B. Your Warranties and Representations to Advantage Marketing Solutions**

You warrant, represent, and covenant to Advantage Marketing Solutions that (a) you are at least eighteen (18) years of age; (b) you possess the legal right and ability to enter into this Agreement; (c) you will use the Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines; (d) you will be financially responsible for the use of your account; (e) you have acquired or will acquire all authorization(s) necessary for hypertext links to third-party web sites or other content; (f) you have verified or will verify the accuracy of materials distributed or made available for distribution via the Services, including, without limitation, your content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted, and (g) your content does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

### **C. Advantage Marketing Solutions Materials and Intellectual Property**

All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Advantage Marketing Solutions or its suppliers or agents pursuant to this Agreement, and any know-how, methodologies, equipment, or processes used by Advantage Marketing Solutions to provide the Services to you, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of Advantage Marketing Solutions or its suppliers. Advantage Marketing Solutions shall also maintain and control ownership of all Internet protocol ("IP") numbers and addresses that may be assigned to you by Advantage Marketing Solutions. Advantage Marketing Solutions reserves, in its sole discretion, the right to change or remove any and all such IP numbers and addresses.

## **9) Enforcement**

### **A. Investigation of Violations**

Advantage Marketing Solutions may investigate any reported violation of this Agreement, its policies or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, customers and/or third parties. Advantage Marketing Solutions will not access or review the contents of any e-mail or similar stored electronic communications except as required or permitted by applicable law or legal process.

### **B. Actions**

Advantage Marketing Solutions reserves the right and has absolute discretion to restrict or remove from its servers any content that violates this Agreement or related policies, or is otherwise objectionable or potentially infringing on any third party's rights or in potentially violation of any laws. In the event of becoming aware of any possible violation by you of this Agreement, any related policies, third party rights or laws, Advantage Marketing Solutions may immediately take corrective action, including, but not limited to, (a) issuing warnings, (b) suspending or terminating the Service, (c) restricting or prohibiting any and all uses of content hosted on Advantage Marketing Solutions systems, and/or (d) disabling or removing any hypertext links to third-party web sites, any of your content distributed or made available for distribution via the Services, or other content not supplied by Advantage Marketing Solutions which, in Advantage Marketing Solutions sole discretion, may violate or infringe any law or third-party rights or which otherwise exposes or potentially exposes Advantage Marketing Solutions to civil or criminal liability or public ridicule. It is Advantage Marketing Solutions policy to terminate repeat infringers. The above stated rights of action, however, do not obligate Advantage Marketing Solutions to monitor or exert editorial control over the information made available for distribution via the Services. In the event Advantage Marketing Solutions takes corrective action due to such possible violation, Advantage Marketing Solutions shall not be obligated to refund to you any fees paid in advance of such corrective action.

### **C. Disclosure Rights**

To comply with applicable laws and lawful governmental requests, to protect Advantage Marketing Solutions systems and customers, or to ensure the integrity and operation of Advantage Marketing Solutions business and systems, Advantage Marketing Solutions may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e., name, e-mail address, etc.), IP addressing and traffic information, usage history, and content residing on Advantage Marketing Solutions servers and systems. Advantage Marketing Solutions also reserves the right to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. To the extent any inconsistency exists between any terms of Advantage Marketing Solutions Privacy Policy and Advantage Marketing Solutions right disclose under this section, Advantage Marketing Solutions right to disclose under this section will control.

## **10) Your License Grant to Advantage Marketing Solutions**

You hereby grant Advantage Marketing Solutions a non-exclusive, worldwide, and royalty-free license for the Initial Term and the Renewal Term, if applicable, to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use your content as necessary for the purposes of rendering and operating the Services to you under this Agreement. You expressly (a) grant to Advantage Marketing Solutions a license to cache materials distributed or made available for distribution via the Services, including content supplied by third parties, and (b) agree that such caching is not an infringement of any of your intellectual property rights or any third party's intellectual property rights.

## **11) Disclaimed Warranties**

You acknowledge and agree that Advantage Marketing Solutions exercises no control over, and accepts no responsibility for, the content of the information passing through Advantage Marketing Solutions host computers, network switches and points of presence, or the Internet. ALL SERVICES PERFORMED HEREUNDER ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING, WITHOUT LIMITATION, ANY FAILURE DUE TO COMPUTER HARDWARE OR COMMUNICATION SYSTEMS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ADVANTAGE MARKETING SOLUTIONS DOES NOT MAKE AND HEREBY DISCLAIMS, AND YOU HEREBY WAIVE ALL RELIANCE ON, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

## Limitation and Exclusion of Liability

### 12) Limitations

IN NO EVENT SHALL ADVANTAGE MARKETING SOLUTIONS OR ITS SUPPLIERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. NEITHER ADVANTAGE MARKETING SOLUTIONS NOR ITS SUPPLIERS SHALL HAVE LIABILITY WITH RESPECT TO ADVANTAGE MARKETING SOLUTIONS OBLIGATIONS UNDER THIS AGREEMENT, ANY ADDENDUM OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF ADVANTAGE MARKETING SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE FOREGOING LIMITATION OR EXCLUSIONS MAY NOT APPLY TO YOU. IN ANY EVENT, THE LIABILITY OF ADVANTAGE MARKETING SOLUTIONS AND ITS SUPPLIERS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO ADVANTAGE MARKETING SOLUTIONS BY YOU UNDER THIS AGREEMENT AND ANY ADDENDUM DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY ADVANTAGE MARKETING SOLUTIONS HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU HEREBY RELEASE ADVANTAGE MARKETING SOLUTIONS AND ITS SUPPLIERS FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIM IN EXCESS OF THE LIMITATION STATED IN THIS SECTION A.

### 13) Interruption of Service

You hereby acknowledge and agree that Advantage Marketing Solutions and its suppliers will not be liable for any temporary delay, outages, or interruptions of the Services. Further, Advantage Marketing Solutions shall not be liable for any delay or failure to perform its obligations under this Agreement, where such delay or failure results from any act of God or other cause beyond its reasonable control (including, without limitation, any mechanical, electronic, communications or third-party supplier failure).

### 14) Service Level Agreement (SLA)

#### A. 99% Uptime Guarantee

Advantage Marketing Solutions network uses multiple, redundant, high-speed connections providing fast, reliable connectivity. We understand the importance of providing a reliable service and have developed the following level of service to ensure maximum performance and uptime. The Advantage Marketing Solutions Service Level Agreement (SLA) provides for network quality and web site availability.

#### B. Coverage

These guidelines apply to Advantage Marketing Solutions customers that have registered for either Shared Hosting Services or Dedicated Hosting Services (collectively, the "Services") and who are in good financial standing with Advantage Marketing Solutions, Inc.

#### C. Service Level

In a given month Advantage Marketing Solutions endeavors to have the content of customer's web site available for http access by third parties 99.99% of the time ("Web Site Availability"), excluding the restrictions below. Downtime exists when third parties are unable to transmit and receive data and Advantage Marketing Solutions records such failure within its monitoring systems. Downtime is measured from the time the trouble ticket is opened by a customer to the time the server is once again able to transmit and receive data.

#### D. Credits

In the event that there is not Web Site Availability, Advantage Marketing Solutions will credit the following month's service fee as follows:

For Shared Hosting services, such credit will be retroactive and will be as calculated below and as measured 24-hours a day in a calendar month, with the maximum credit not to exceed the monthly charge for the affected month. The monthly service charge is described as the monthly hosting fee only. Domain charges and additional service charges are not considered part of the monthly hosting fee and are not applicable to this SLA.

Customer Web Site Availability	Credit
95% to 99.98%	25% credit
90% to 94.9%	50% credit
89.99 % or below	100% credit

For Dedicated services, if the Web Site Availability is between 89.9% and 99.98% for any particular month, the credit will be retroactive and equivalent to the difference between the guaranteed level of availability of the customer's services, during the month and the calculated actual level of availability of the customer's services, multiplied by the actual charges incurred by the customer for the services during that month. In addition, for dedicated services, customers may be entitled to additional credits as calculated below and as measured 24-hours a day in a calendar month, with the maximum credit not to exceed fifty percent (50%) of the monthly service charge for the affected month. The monthly service charge is described as the monthly hosting fee only. Domain charges and additional service charges are not considered part of the monthly hosting fee and are not applicable to this agreement.

Minutes of Continuous Downtime	Credit
90 to 179 Minutes	25% credit
180 Minutes or More	50% credit

In order for a customer to receive a credit on their account, the customer must request such credit within seven (7) business days after customer experienced no Web Site Availability. Customers must request credit by sending an email to our billing department. For security, message must contain customer name, the dates and times of the unavailability of customer web site, and such other customer identification requested by Advantage Marketing Solutions. Credits will usually be applied within sixty (60) days of customer credit request. Credit to customer account will be customer's sole and exclusive remedy in the event that there is no Web Site Availability.

#### E. Restrictions

Credits will not be provided to a customer in the event that the customer has no Web Site Availability resulting from (i) scheduled maintenance as posted from time to time via email bulletins or direct mail. (ii) customer behavior including acts or omissions of customer, or any use or user of the service authorized by customer, or the performance or failure of customer's equipment, facilities or applications, or customer's ISP or connection to the internet, or (iii) circumstances beyond Advantage Marketing Solutions reasonable control, including, without limitation, acts of God, 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 party software or hardware or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of customer's service.

