

AIRE'D IDEAS THEO DIGITAL GALLERY SYSTEM CUSTOMER SOFTWARE AND SERVICE AGREEMENT (Please Sign and return with New Account Set-up form)

This is an agreement between you and Aire'd Ideas of #313 428 West 8th Avenue, Vancouver, B.C. Fax: 604.877.1794 (Aire'd Ideas) regarding your use of Aire'd Ideas' Theo Digital Gallery System Software, and the related computer, interactive information, communication and server management services (the Services). The term You and Your as used in this Agreement means the party which executes this Agreement, and which is regarded as the account holder. This Agreement governs the terms and conditions under which Aire'd Ideas makes the Software and Services available to you. Under this Agreement, you must comply with Aire'd Ideas' then current "Acceptable Use Policy," as updated from time to time by Aire'd Ideas, which can be viewed as Schedule A to this Agreement. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY COMPLETING THIS AGREEMENT YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND AIRE'D IDEAS ACCEPTABLE USE POLICY.

1. The Service

The Service provides the tools to facilitate the development and promotion of an online gallery and includes: customized web templates, web page programming and shared server hosting services. The details of the software tools and service are outlined in the New Account Set-Up Form. As part of your service, you may either pay for the software on a month to month basis or purchase at one time a licensed copy of the software to be run and serviced only on an Aire'd Ideas web server. Given the complex nature of the software and service, it is not transferable to a third party web host. Upgrades to the software and service will be available from time to time and you will be notified of the new features and their additional cost. The Service is generally available seven (7) days a week. We may at anytime without notice or liability restrict the use of the Service or limit its availability in order to perform maintenance activities.

2. Term of Service

Aire'd Ideas will host an account for you, for a website with your chosen domain name, for the period of time (the Term) corresponding with the payment plan chosen by you. This Agreement will be automatically renewed at the end of the Term and each successive renewal term, unless terminated prior. Termination of Services by you must be given in written form, at least 30 days prior to the termination date. Phone and email notification is not acceptable. For any one of the virtual hosting plans, the full amount paid less any set up fees and overages will be refunded if Aire'd Ideas is notified of your intent to terminate within the first 30 days following activation. No refund is available after the 30th day following activation for the duration of the chosen payment plan.

3. Charges and Payments

For access to and use of the Services you agree to pay all charges applicable for the service plan you select. All accounts are "prepaid". Payment is acceptable by cheque or credit card. If Aire'd Ideas does not receive payment by close of business (6:00 pm) on your billing due date, a late payment fee of \$5.00 will be applied to your account. Should the account remain unpaid for a further 7 days, the account will be placed on hold and will be subject to a reactivation fee of \$10.00. Cheques that are returned unpaid by the bank are subject to a \$25.00 return cheque charge and declined credit card transactions are charged \$10.00. Aire'd Ideas may at any time, with notice of not less than thirty (30) days, change its charges or invoicing procedures. Aire'd Ideas will provide notice of changes to its charges by emailing your listed account email address. You have the right to refuse the price change and terminate your account with Aire'd Ideas.

4. Use of Services

You are responsible for providing your website, and for the final content and design once created by Aire'd Ideas or another third party, including all Data. The Services can only be used for legal purposes under all applicable international, federal, provincial, and municipal laws. Further, you agree not to store, transmit, link to, advertise or make available any images containing pornography. You agree to follow generally accepted rules of "Netiquette" when sending e-mail messages or posting to newsgroups. Violations of these or any other provisions of this Agreement may result in termination of the Services provided by Aire'd Ideas, with or without the grant of a notice or cure period, such notice or cure period to be granted at the sole discretion of Aire'd Ideas based upon the severity of the violation. Aire'd Ideas reserves the right to refuse service if any of the content within,

or any links from, your website is deemed illegal, misleading, or obscene, or is otherwise in breach of Aire'd Ideas then current Acceptable Use Policy, in the sole and absolute opinion of Aire'd Ideas. If Aire'd Ideas terminates the Services, such termination shall be without refund. Notwithstanding anything in this Agreement, the content of your website is your sole responsibility. You agree to indemnify and hold harmless Aire'd Ideas from any and all claims, losses, damages, liabilities, judgments, or settlements, including reasonable attorney's fees, costs, and other expenses incurred by Aire'd Ideas, (collectively, the Claims) related to or in connection with the content of the your website. The terms of this Section will survive any termination of this Agreement.

5. Data

You own your website and you represent and warrant that you either own or have the right to post or use your Data on your website in connection with the Services. You are responsible for any and all arrangements or agreements with artists for your use of any images or information, including all copyright issues. In this Agreement, the term Data includes text, images, artist information, design elements, confidential information, customer or collector lists or contact information, any software code and all other data and information which forms part of your website, or which you have posted for your use in connection with the Services. You represent and warrant that Data (including images or any personal information) which you post or use on your website in connection with the Services will not violate (a) the intellectual property rights, or (b) the privacy rights of any third party.

6. Confidentiality & Non-Competition

Both you and Aire'd Ideas acknowledge and agree that each party may disclose certain confidential information during the term of this Agreement, including customer or collector lists, financial information, or information relating to business operations. Both you and Aire'd Ideas agree to maintain this information in confidence and not to disclose it to third parties without the prior consent of the other party. Information will not be considered confidential if it is in the public domain, or if it is known or developed independently of this relationship. Aire'd Ideas will use commercially reasonable efforts to maintain the security of all of your confidential information. Aire'd Ideas will not sell or provide your collector or other confidential information to any third party regardless of monetary reimbursement without your prior written consent. The principal of Aire'd Ideas and any employees of Aire'd Ideas are under an obligation of non-competition and will not compete with you or sell directly to your collectors, or assist others in doing so, for a period of one year following their departure from Aire'd Ideas or termination of employment with Aire'd Ideas.

7. Account Holder Responsibility

This Agreement applies to all accounts, sub-accounts, and alternative account names associated with your principal account. You are responsible for the use of each account, whether used under any name or by any person, and for ensuring full compliance with this Agreement by all users of that account. An Aire'd Ideas account may not be transferred without prior written approval from Aire'd Ideas. You are responsible for maintaining the confidentiality of your password. Aire'd Ideas will not change passwords to any account without proof of identification, which is satisfactory to Aire'd Ideas, which may include written authorization with signature. In the event of a breach of security through your account, you will be liable for any unauthorized use of the Aire'd Ideas Services, including any damages resulting therefrom, until you notify Aire'd Ideas's customer service. Aire'd Ideas will not be responsible for any unauthorized use of your password, or use of your password by your partners, agents, employees or ex-employees. You acknowledge and agree that any person (such as partners, agents or employees) who you authorize to use your password will have access to your data, including your confidential information or Data (including any customer or collector lists). Aire'd Ideas is in no way responsible for any losses or damages to you which arise from the access to or use of your confidential information or Data (including any customer or collector lists) by persons whom you have authorized to use your password.

8. Account Ownership

In the event of any partnership break-up, employee dismissal, divorce or other legal problems in which you are involved you understand that Aire'd Ideas will remain neutral and may put the account on hold until the dispute or situation has been resolved. Under no circumstances will Aire'd Ideas be liable for any losses or damages incurred by you during this time of determination of ownership, or otherwise. You agree to indemnify and hold harmless Aire'd Ideas from any and all Claims arising from such ownership disputes. The terms of this Section will survive any termination of this Agreement.

9. Shared Services

You agree not to harm Aire'd Ideas, its reputation, computer systems, programming and/or other persons using Aire'd Ideas' services. We agree not to harm as well. Aire'd Ideas reserves the right to select the server for your website for best performance. You understand that the Services provided by Aire'd Ideas are provided on a shared server. This means that one website cannot be permitted to overwhelm the server with heavy CPU usage, for example from the use of highly active CGI scripts or chat scripts. If your website overwhelms the server and causes complaints from other users, you have outgrown the realm of shared servers, and will need to relocate your website. Aire'd Ideas will refund any unused portion of prepaid services. If you refuse to comply with this Section, then Aire'd Ideas has the right to terminate the Services provided to you. The terms of this Section will survive any termination of this Agreement.

10. Transfer of Rights

Your rights and privileges under this Agreement cannot be assigned, sold or transferred without the prior written consent of Aire'd Ideas.

11. Sale of Advertising

If you sell or resell advertising or webspace to a third party then you will be responsible for the contents of that advertising and the actions of that third party. Aire'd Ideas has the absolute right to reject any advertising or other third party content that is illegal, offensive or otherwise in breach of the then current Aire'd Ideas Acceptable Use Policy. The e-mail distribution of "SPAM", "JUNK MAIL", or "UNSOLICITED COMMERCIAL E-MAIL", is expressly prohibited. If you refuse to remove any advertising or other third party content deemed objectionable by Aire'd Ideas, Aire'd Ideas may terminate the Services.

12. No Warranty

Aire'd Ideas Services are 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. Aire'd Ideas expressly disclaims any representation or warranty that the Aire'd Ideas Services will be error-free, secure or uninterrupted. No oral advice or written information given by Aire'd Ideas, its employees, licensors or the like, will create a warranty; nor may you rely on any such information or advice. The terms of this Section will survive any termination of this Agreement. Every effort.

13. Indemnification

You agree to indemnify and hold Aire'd Ideas harmless from any and all Claims resulting from or connected with any activities conducted by you or any breach by you of your obligations under this Agreement, including any claims of infringement or breach of privacy with respect to the Data which you post or use on your website. You and Aire'd Ideas will promptly notify the other upon receipt of any Claim or legal action arising out of activities conducted pursuant to this Agreement. The rights and responsibilities established in this Section will survive any termination of this Agreement.

14. Limitation of Liability

Aire'd Ideas will use its commercially reasonable efforts to provide the Services for you subject to routine maintenance, and any interruptions which are beyond the control of Aire'd Ideas. You hereby acknowledge that the network may, at various time intervals, be down due, but not restricted to, utility interruption, equipment failure, natural disaster, acts of God, or human error. In no event shall Aire'd Ideas be liable to you for any damages resulting from or related to any failure or delay of Aire'd Ideas in providing the Services under this Agreement. In no event shall Aire'd Ideas be liable to the you for any indirect, special or consequential damages or lost profits arising out of or related to this Agreement or the performance or breach thereof. The aggregate, total liability of Aire'd Ideas under this Agreement, if any, shall in no event or circumstance exceed the total amount actually paid by you hereunder. The terms of this Section will survive any termination of this Agreement.

15. Use of Account Holder's Name

Aire'd Ideas may include your name and contact information in directories of Aire'd Ideas service subscribers for the purpose promoting the use of the Services by additional potential clients. However, Aire'd Ideas is not authorized to print your name, trademarks or other identifying information in any other advertising or promotional materials without your prior written consent .

16. IP Address

If Aire'd Ideas assigns you an Internet Protocol address in connection with your use of the Aire'd Ideas services, the right to use that Internet Protocol address will remain with and belong only to Aire'd Ideas, and you will have no right to use that Internet Protocol address except as allowed by Aire'd Ideas in its sole and absolute discretion.

17. Entire Agreement

This Agreement, along with the New Account Set-Up Form and Acceptable Use Policy, constitutes the entire agreement between you and Aire'd Ideas with respect to the Software and Services and supersedes all prior agreements between you and Aire'd Ideas. Where there is any conflict, this Agreement will prevail. Aire'd Ideas' failure to enforce any provision of this Agreement shall not be construed as a waiver of any provision or right. In the event that a portion of this Agreement is held unenforceable, the unenforceable portion will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions will remain in full force and effect. The terms of this Section will survive any termination of this Agreement.

18. Dispute Resolution

The parties shall attempt to resolve all disputes arising out of this Agreement in a spirit of cooperation and with a problem-solving mindset, without formal proceedings. Should any legal action permissible under this Agreement be instituted to enforce the terms and conditions of this Agreement, in particular the right to collect money due on unpaid invoices, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses incurred at both the trial and appellate levels. The terms of this Section will survive any termination of this Agreement.

19. Governing Law

The interpretation and enforcement of this Agreement shall be governed according to the laws of the province of British Columbia (excluding its choice of law rules) and the federal laws of Canada applicable therein. You hereby consents to personal jurisdiction in the federal and provincial courts of British Columbia, Canada for any action arising out of or relating to your use of the Services. The federal and provincial courts of British Columbia, Canada will have exclusive jurisdiction over all such actions. In any such action, the prevailing party will be entitled to recover all legal expenses incurred in connection with the action, including but not limited to its costs, both taxable and non-taxable, and reasonable attorney's fees. The terms of this Section will survive any termination of this Agreement.

20. Notice

Notices required by this Agreement shall be in writing and shall be delivered either by personal delivery or by mail. If delivered by mail, notices shall be sent by any express mail service; or by certified or registered mail, return receipt requested; with all postage and charges prepaid. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, or as specified by subsequent written notice delivered by the party whose address has changed.

21. Successors and Assigns

This Agreement shall be binding on the parties, and on their successors and assigns, without regard to whether it is expressly acknowledged in any instrument of succession or assignment.

22. Captions

The captions of each paragraph of this Agreement are inserted solely for the reader's convenience, and are not to be construed as part of this Agreement.

Signature

Name

Date

Gallery Name

Schedule A

AIRE'D IDEAS ACCEPTABLE USE POLICY

Our goal is to provide a high quality Internet online gallery creation and hosting service to Our customers. The Internet is a new and evolving avenue for both commercial and social interaction. However, Aire'd Ideas believes that along with the exciting opportunities that the Internet provides, there are also obligations. While Aire'd Ideas does not intend to actively screen or review any content on your website, We do reserve the right in Our sole and absolute discretion to remove any content for any reason, including but not limited to, your violation of any laws, the terms and conditions under which Aire'd Ideas is providing this Internet service to you or this Acceptable Use Policy. The Acceptable Use Policy defines the actions relating to the content on and operation of your Web site which Aire'd Ideas considers to be inappropriate and thus prohibited. The examples named in this list are in addition to the types of content identified in the Agreement, are non-exclusive, and are provided solely for your guidance. If you are unsure whether any contemplated use or action is permitted, please send an e-mail in advance to sales@thedigitalgallery.com for assistance.

Actions which Aire'd Ideas considers inappropriate include, but are not limited to, the following:

1. Using the Service

- a. in a tortious or unlawful manner, including the posting of libelous, defamatory, scandalous, threatening, harassing or private information without the permission of the person(s) involved, or posting content that is likely to cause emotional distress;
- b. to sell any products or services that are unlawful in the location at which the content is posted or received, or for gambling or gaming activities;
- c. in attempts to obtain unauthorized access, such as attempts to circumvent user authentication or security of any host, network or account ("cracking"). This includes accessing data not intended for the customer, logging into a server or account the customer is not expressly authorized to access or probing the security of other networks;
- d. in attempts to interfere with service to any user, host, or network. This includes "denial of service" attacks, "flooding" of networks, deliberate attempts to overload a service and attempts to "crash" a host;
- e. to post any content or material that
 - i. is obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable;
 - ii. advocates, promotes or otherwise encourages violence against any governments, organizations, groups or individuals or which provides instruction, information or assistance in causing or carrying out such violence;
 - iii. violates any copyrights, patents, trademarks, service marks, trade names, trade secrets or other intellectual property rights of others.

2. Promoting, marketing or otherwise directing traffic (directly or indirectly) to a Web site hosted by the Service (including, but not limited to, your particular Web site) through the use of unsolicited commercial e-mail or spam.

3. Failing to obtain all required permissions when using the Service to receive, upload, download, display, distribute, or execute programs or perform other works protected by intellectual property laws including copyright and patent laws.

4. Deleting or altering author attributes or copyright notices, unless expressly permitted in writing by the author or owner.

5. Introducing viruses, worms, harmful code and/or Trojan horses on the Internet.

6. Using any kind of program/script/command designed to interfere with a user's terminal session.

After reading the terms and conditions, please initial one of the following:

_____ "Yes, I have read the above page and agree to the Aire'd Ideas Acceptable Use Policy."

_____ "No, I do not agree to the terms and conditions."